

RESOLUTION OF THE
 NAVAJO NATION COUNCIL
 24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022

AN ACT

RELATING TO THE BUDGET AND FINANCE, RESOURCES AND DEVELOPMENT, AND
 NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL;
~~ALLOCATING \$5,000,000 FROM THE SÍHASIN FUND FOR THE ASSESSMENT AND~~
~~REMEDICATION OF THE FORMER NAVAJO FOREST PRODUCTS INDUSTRY LOCATION~~
~~IN NAVAJO, NM; APPROVING THE RELATED EXPENDITURE PLAN PURSUANT TO~~
~~12 N.N.C. § 2501 - § 2508~~

JMN
mf

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Budget and Finance Committee is a standing committee of the Navajo Nation Council, with legislative authority to "review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds" including money from the Navajo Nation's Síhasin Fund. 2 N.N.C. § 301(B)(2).
- B. The Resources and Development Committee was established as a standing committee of the Navajo Nation Council, with the legislative authority over the Navajo Nation's natural resources, environment, and land matters, and the protection of these resources. 2 N.N.C. § 500(A); 2 N.N.C. § 500(C)(1); 2 N.N.C. § 500(C)(2).
- C. The Resources and Development Committee also serves as the oversight committee for the Navajo Environmental Protection Agency and the Navajo Nation's Hazardous Substances Fund. 2 N.N.C. § 500(C)(1); Resolution No. BFJA-09-11.
- D. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council that considers all proposed final actions by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
- E. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A). As such, the Council may approve appropriations from the Navajo Nation's Síhasin Fund.
- F. 12 N.N.C. § 2502, as amended by CJA-03-18, states the purpose of the Navajo Nation's Síhasin Fund, as follows:

§ 2502 Purpose

- A. The purposes of this Fund are to provide financial support and/or financing for:

1. The planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and transportation and communication systems, within the Navajo Nation; . . .
- B. For the Purpose in § 2502(A)(1), Fund expenditures for infrastructure shall not be limited by 12 N.N.C. § 1310(F) or TCDCJY-77-99.
- C. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund, including loan financing from the Fund, for the purposes in § 2502(A)(1), shall be favored over direct funding in whole.
- G. The Síhasin Fund provides that "Fund Principal" shall consist of all deposits made to the Síhasin Fund and that "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized by the Fund Principal, and that Síhasin Fund Income shall be deposited in, and added to, the Fund Principal until such time as a Fund Expenditure Plan is duly approved. 12 N.N.C. § 2504 and § 2505(C).
- H. The Síhasin Fund provides that "Fund Principal and Income shall not be expended except pursuant to a Fund Expenditure Plan consistent with the purposes set forth in § 2502 of this Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council." 12 N.N.C. § 2505(A).

SECTION TWO. FINDINGS

- A. In Resolution No. RLC-07-21-31, the Red Lake Chapter is requesting a minimum of \$1,000,000 to be allocated annually from the Síhasin Fund, for the continued assessment and environmental remediation of the former Navajo Forest Products Industry ("NFPI") location in the Red Lake Chapter. **EXHIBIT A.**
- B. The Navajo Environmental Protection Agency, Superfund/Brownfields Program, has prepared a 2021 Report explaining the serious problem of the extensive contamination of the former NFPI area, describing the existing environmental damage, and showing the necessary scope of the cleanup project and its estimated cost. Navajo EPA details the groundwater and soil contamination, as well as the leftover surface debris, that has created a significant public health hazard in the area that needs immediate attention. **EXHIBIT B.**

- C. The proposed Expenditure Plan for the requested funding, describing the estimated expenses for a total cleanup of the former NFPI area, is attached as **EXHIBIT C**.
- D. The Navajo EPA Director has also prepared a request for the \$5,000,000 amount from the Síhasin Fund, as an initial amount designated for the NFPI cleanup project; and the Director has specifically approved the proposed Expenditure Plan attached as **EXHIBIT C**. The Navajo EPA Director's memorandum, with the Expenditure Plan, is attached as **EXHIBIT D**.
- E. In Resolution No. CF-07-08 the Navajo Nation Council established the Hazardous Substances Fund for the Navajo EPA. See 4 N.N.C. § 2701(A). Pursuant to Budget and Finance Committee Resolution No. BFJA-09-11, the Fund Management Plan for the Hazardous Substances Fund was approved. **EXHIBIT E**.
- F. Because the Hazardous Substances Fund ("HSF") is already established and the related Fund Management Plan has been approved, the Navajo EPA is requesting that the \$5,000,000 in Síhasin funds be deposited directly into the Hazardous Substances Fund, to be designated specifically for NFPI cleanup activities, in accordance with the Expenditure Plan attached hereto as **EXHIBIT C**, and with the approved HSF Fund Management Plan. **EXHIBIT D**.
- G. The requested \$5,000,000 in Síhasin funds for the NFPI cleanup project meets the criteria for Síhasin funding because the project will involve extensive work on "infrastructure" and "commercial and government buildings" and the project will facilitate "economic development and community development" in the Red Lake Chapter area. 12 N.N.C. § 2502(A) (1).
- H. This funding request meets the preference for the leveraging of funds, as mentioned in 12 N.N.C. § 2502(C), because the \$5,000,000 in Síhasin funds will be placed into the Hazardous Substances Fund and this money shall thereafter serve as evidence of the Navajo Nation's substantive commitment to environmental remediation, thereby allowing the Navajo EPA to leverage these funds in seeking further federal funding for the cleanup project.
- I. Furthermore, at Navajo EPA's urging, during the summer of 2021 the U.S. EPA Superfund Emergency Response Program conducted a Time Critical Removal Action at the NFPI site. U.S. EPA spent approximately \$6,000,000 on surface cleanup of asbestos contamination at the site, including the demolition and removal of the lumber drying kiln. This work took 3.5 months of 70-hour workweeks, and accomplished the removal of over 4,000

cubic yards (about 200 tractor trailer loads) of asbestos waste.

SECTION THREE. ALLOCATING \$5,000,000 FROM THE SÍHASIN FUND FOR THE ASSESSMENT AND REMEDIATION OF THE FORMER NAVAJO FOREST PRODUCTS INDUSTRY LOCATION; APPROVING THE RELATED EXPENDITURE PLAN PURSUANT TO 12 N.N.C. § 2501 - § 2508

~~A. In accordance with 12 N.N.C. § 2505(A), the Navajo Nation hereby allocates \$5,000,000 from the Síhasin Fund to be placed into the Hazardous Substances Fund.~~

JMN
mg

B. The Navajo Nation hereby approves the Expenditure Plan prepared by the Navajo EPA, attached hereto as **EXHIBIT C**.

C. The purpose of the Síhasin funds approved herein shall be the continued assessment work and environmental remediation activities at the former NFPI location in the Red Lake Chapter, as described in the approved Expenditure Plan.

D. The Controller shall determine whether the source of the approved Síhasin funds will be Síhasin Fund Principal or Síhasin Fund Income, or a combination of both.

E. The approved Síhasin funds may be further leveraged by bond or loan financing pursuant to the Navajo Nation Bond Financing Act (12 N.N.C. § 1300 et seq., as amended), using Síhasin Fund earnings for repayment and financing costs, upon approval of the Budget and Finance Committee and upon further approval by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

F. Within five (5) business days of the effective date of this Act, the Office of the Controller shall deposit the \$5,000,000 in Síhasin funds approved herein into the Hazardous Substances Fund, and the \$5,000,000 shall thereafter be available to the Navajo EPA for use in accordance with the Expenditure Plan approved herein and the intent of this Act.

G. The Navajo EPA Director shall be responsible for ensuring compliance with the Expenditure Plan, as well as the HSF Fund Management Plan and all applicable Navajo Nation laws and regulations.

H. On a quarterly basis, the Navajo EPA shall provide to the Navajo Nation Council a written report, and also a verbal presentation if so requested, explaining the status of its ongoing assessment work and environmental remediation activities at the former NFPI location. Such report shall include the current status of the \$5,000,000 in Síhasin funds

approved herein, and shall describe any further funding requests expected to be made during the upcoming fiscal year for this Project.

- I. The approved Síhasin funds shall not lapse on an annual basis, but shall remain in the Hazardous Substances Fund until fully expended by Navajo EPA.
- J. The Síhasin Fund may be reimbursed in the amount of the allocation approved herein, from funds available to the Navajo Nation from any and all state and federal sources, including Congressional appropriations under the American Rescue Plan Act of 2021("ARPA") or other COVID-19-related relief, if the Project expenditures described herein are deemed eligible under such COVID-19-related or other funding sources.

SECTION FOUR. EFFECTIVE DATE


This Act and the Expenditure Plan approved herein shall become effective pursuant to 12 N.N.C. § 2505.

SECTION FIVE. SAVING CLAUSE

If any portion of this Act is invalidated by the Supreme Court of the Navajo Nation, or by any Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, the remainder of this Act shall be the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 19 in Favor, and 01 Opposed, on this 19th day of December 2022.


 Honorable Jamie Henio, Speaker Pro Tem
 24th Navajo Nation Council
DEC 29, 2022
 DATE

Motion: Honorable Elmer P. Begay
 Second: Honorable Paul Begay, Jr.

Speaker Pro Tem Jamie Henio not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

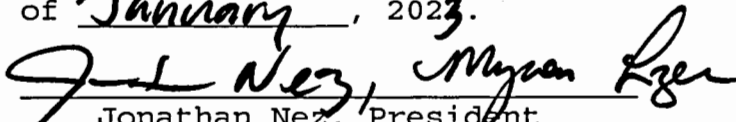
1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this _____ day of _____, 2022.

Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2022 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

3. I, hereby, exercise line-item veto pursuant to the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009, on this 6th day of January, 2023.


Jonathan Nez, President
Navajo Nation

Arval T. McCabe
PRESIDENT

Roger L. James
VICE-PRESIDENT

Loberta Redhouse
SECRETARY/TREASURER

Wilson Stewart, Jr.
COUNCIL DELEGATE



EXHIBIT A

RED LAKE CHAPTER

RLC-07-21-31

RESOLUTION OF RED LAKE CHAPTER #18

AMENDING AND REAFFIRMING CHAPTER RESOLUTION RLC-06-19-19 TO REQUEST THE BUDGET & FINANCE COMMITTEE, RESOURCES & DEVELOPMENT COMMITTEE, NAABIK' IYATI' COMMITTEE, 24TH NAVAJO NATION COUNCIL, CAPITAL PROJECTS MANAGEMENT DEPARTMENT AND THE OFFICE OF THE PRESIDENT/VICE PRESIDENT TO APPROPRIATE FUNDS OF AT MINIMUM \$1,000,000.00 ANNUALLY FROM THE NAVAJO NATION SIHASIN FUNDING FOR THE CONTINUED ASSESSMENT AND REMEDIATION OF THE FORMER NAVAJO FOREST PRODUCTS INDUSTRY LOCATED WITHIN RED LAKE CHAPTER #18.

WHEREAS:

1. Pursuant to 26 N.N.C., section 3 (a) the Red Lake Chapter #18 is a certified chapter of the Navajo Nation as listed under 11 N.N.C., Part 1, Section 10; and
2. Pursuant to 26 N.N.C., Section 2 (b), the Red Lake Chapter #18 is delegated the governmental authority to make decisions over local matters consistent with the Navajo laws, customs, and tradition and is vested with the authority to review all matters affecting the community and to make appropriate correction when necessary and make recommendations to the Navajo Nation and other local agencies for appropriate actions; and
3. The Red Lake Chapter #18 provides multiple public services to the community including services that affect the safety and health of the community and the property of its members; and
4. Pursuant to Red Lake Chapter #18r resolution RLC-06-19-19, the chapter approved to request to the Navajo Nation to appropriate at minimum \$1,000,000.00 annually for the continued assessment and remediation of the former Navajo Forest Products Industry (NFPI); and
5. Based on continued assessments and research conducted by Navajo Nation Environmental Protection Agency and other agencies, the cost estimate for the remediation and clean-up for the former NFPI site and other areas affected by the NFPI operations is estimated to be at minimum \$50 million or more; and
6. The Budget and Finance Committee of the Navajo Nation Council is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds per 2 N.N.C. section 301 (B) (2); and
7. The Resources and Development Committee of the Navajo Nation Council is empowered to provide oversight over chapter activities, as well as oversight over community and economic development on the Navajo Nation per 2 N.N.C. section 501(C) (I); and
8. The Navajo Nation Code provides that the purpose of the Navajo Nation Sihasin funds is as follows: A. The purpose of this fund is to provide financial support and/or financing for: 1. The

follows: A. The purpose of this fund is to provide financial support and/or financing for: 1. The planning and development of economic development and regional infrastructure supporting economic development, and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and transportation and communication systems, within the Navajo Nation; and

9. Upon completion of assessments and remediation, the former NFPI site and other affected areas can be returned to beneficial use for commercial and/or light industrial or other use the Red Lake Chapter #18 deems appropriate.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Red Lake Chapter hereby amends and reaffirms Chapter Resolution RLC-06-19-19 to request the Budget & Finance Committee, Resources and Development Committee, Naabik' iyati' Committee, and the 24th Navajo Nation Council, Capital Project Management Department and the Office of the President/Vice President to appropriate funds of at minimum \$1,000,000.00 annually from the Navajo Nation Sihasin funding for the continued assessment an remediation of the former Navajo Forestry Products Industry located within Red Lake Chapter #18.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by the Red Lake Chapter #18 at a duly called meeting in (Navajo Nation), New Mexico at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 1 abstained on this **21st** day of **July, 2021**.



Arval McCabe
Chapter President

Motion by: Loberta Redhouse

Seconded by: Florina Howard

Navajo Forestry Products Industry, History of Known Environmental Violations

NFPI operated for 8 years before there was a Nation EPA and 10 years before the establishment of the Navajo Nation Environmental Protection Commission.

Due to their standard operating procedures (SOP), NFPI had multiple unpermitted Discharges and Violations of The Clean Water Act Since the inception of the USEPA in 1970

NTUA had sludge management issues in their sewer lagoons due to the waste water from NFPI containing chemicals to precipitate impurities out of boiler water. **Where did they put the dredged sludge?** Sampling will be needed in that location.

During discussions with Navajo Tribal Utility Authority (NTUA), NFPI admitted that they discharge into the NTUA sewer lagoons but **NOT** in to Black Creek

USEPA field inspection staff observed discharge From the leaking underground pipe From the power plant/cooling towers **Flowing into Black Creek**

Environmental problems arise when water escapes from a boiler system in the form of droplets from the cooling towers, the boiler piping, and the connecting pipes between power generation plants and cooling towers.

Such water droplets carry with them the various chemicals that are used in the system. Some of these chemicals are environmentally harmful. NFPI used descalants, precipitants, algicides, acids and other chemicals in their boiler water.

Hexavalent chromium is the one that is of the most concern and warrants **immediate attention**.

Hexavalent chromium-based compounds are among the most efficient and cheapest corrosion inhibitors available. Hexavalent chromium is a **known carcinogen, and is highly toxic**.

Navajo Forestry Products Industry, History of Known Violations; Results

1. Because Black Creek and its tributary have been and are CURRENTLY eroding the facility dump,
2. Because of the quantity and diversity of the chemicals (including mercury and formaldehyde) used in the various processes of a sawmill and particle board manufacturing operation and the SOP of the industries of the day with regards to containment and disposal of such chemicals.
3. Because of the myriad of drainage ditches and underground pipes across the site and their potential for leakage,
4. Because of the underground pipe drainages that bypassed the lagoons and drained straight into the wash below Red Lake Dam,
5. Because of the facility discharging all waste water and boiler blowdown water directly into:
 - Black Creek,
 - The wash below the dam, and
 - The NTUA sewer lagoons

ALL sediments are suspect for RCRA Metals, Hexavalent Chromium, Formaldehyde, Asbestos, and other hazardous, toxic, and carcinogenic substances in the following specific areas:

- Black Creek above and below the diversion dam extending a mile and a half east along the facility dump,
- The fenced-in facility compound,
- The former sewer lagoons located in the wash below Red Lake,
- The wash below Red Lake for a distance yet to be determined, and
- The lake bed of Red Lake

Black Creek, which is actively eroding the open dump, is used to fill Red Lake.

As late as 2004, Red Lake had a Do Not Eat the Fish advisory because of the levels of Mercury in the fish.

- The lake was drained because of dam structure issues.
- The sediments were not sampled and the lake is being filled back up and stocked with fish.
- Lake water is used for irrigation.
- The lake is used for recreation.
- Livestock drink the water of Black Creek.

NFPI Contamination Details

Previous to 1997 contamination was the result of the SOP of the industry and the disregard for environmental laws.

Since 1997, environmental impacts throughout the site have occurred because of the chemicals abandoned on site being released into the environment by acts of vandalism and/or aging containers.

- A green powdery semisolid substance discovered in a heap of debris when its packaging deteriorated tested as Chromium Aluminum Compound
- There was an unknown waste material photographed near the particleboard building discharging an oily, discolored liquid

Former workers provided information regarding the urea formaldehyde deliveries at the site occurring around the clock with deliveries by tractor trailer tanker.

Petroleum Groundwater Contamination and Soil Contamination Comingled with Asbestos

Current Surface-Area of Petroleum Groundwater Contamination approximately 2 acres (as of 2018). The shallow aquifer is at 18 to 20 feet below ground surface.

Two feet of Diesel fuel floating on top of the groundwater had been reduced to an inch or less by 2018. Fuel is likely re-accumulating since the initial reduction since there has been no remediation activity at the site due to the pandemic and lack of funding to hire a remediation contractor.

There are approximately 22,000 cubic yards of heavily contaminated source soil “bleeding” diesel and gasoline into the groundwater.

Asbestos is comingled in the petroleum contaminated soil to a depth of at least 2 feet in a large portion of that soil making any cleanup plan very complicated.

NFPI Current Surface Debris, Miscellaneous Chemical Drums, and Totes

Surface Asbestos

- There are large diameter asbestos fiber concrete pipe (Transite pipe) fragments at the powerplant location and the cooling towers location.
- There are broken off sections of Transite pipe throughout the site present in the broken up concrete slabs.
- Scattered fragments of Transite pipe litter the ground in various areas.
- The remaining underground piping for fire suppression and other transport of fluids throughout the 100 acre facility is suspected to be Transite piping since most industrial piping from that era was Transite.

Transite roofing material and asbestos-containing tar and built-up roofing materials from kiln roof are scattered all over the site.

Vinyl Asbestos Tile flooring material has been scraped into piles in areas of the site and has been scattered by the wind, animals, and vandals. Asbestos fibrous roofing material from various facility roofs is also present on the ground over much of the site.

Asbestos containing gaskets and fragments thereof are present in many areas of the site. There are very few areas of the site that do not have asbestos present and visible at the surface.

There are steel and poly drums, both labeled and unlabeled on site:

- Transformer Oil
- Premium Hydraulic oil
- Saw-Glide

There is a 250 gallon tank of ferrous chloride solution on site. Ferrous chloride solution requires a two person haz-mat team with air supplied respirators to even sample it to see if that is what is really in the container.

There are extra large piles of heaped up debris on site; one that has steel drums of unknown content beneath it.

There are piles of the remains of all of the concrete foundations and slabs, some of which may be contaminated by boiler system water deposits.

The amount of metal littering the site left over from building removal is enormous.

NFPI Mile Long Facility Dump: a Public Health Hazard

The facility open dump extends more than a mile up Black Creek

The high wall at the farthest, most recently active end of the dump, is about 80 feet tall and 150 YARDS wide

The dump extends through the canyon along Old Rte. 31 (a dirt road north of the facility) past a tributary that feeds into Black Creek one mile east of the facility. There is waste material on both sides of Old Rte. 31 and both sides of the tributary with an erosional channel cut by the tributary.

The portion of the waste on the north side of Old Rte. 31 is actively being eroded by Black Creek.

Run off and water percolating down through an open dump leach out chemical elements that recombine to form more toxic contaminants than were placed into the dump. This erosion of the open dump is a **public health hazard**.

Physical Hazards

The Particle board press sump is roughly 80' X 25' and is 12 feet deep at the edges with vertical sides. No ladders or other means of egress are to be seen in the sides. The sump is more than 30 feet deep in the center. This sump always has water in it.

There is a greasy slimy sheen on top of the water. There is dark oil staining of the concrete and soil along the southern and western edges of the sump. It is reported that the people who purchased the machinery dumped all of the oils and fluids out on the bank behind the building before hauling. This area is stained a dark black and is at the top of the embankment for Navajo Rte. 12.

There is another smaller sump of unknown depth in the same slab. It is nearly full of smelly black soil and stunted plants. When it has water in it visible, there is a rainbow sheen on top of the black water indicating oils of some kind.

The walls of the waste shavings building are balanced precariously on the slab and are falling over. One is supported by a T-post only. These walls are a favorite of the graffiti artists.

Navajo EPA Brownfields Program Sampling Strategy for NFPI: A Plan Under Development

1. Separate the site in operational units
 1. OU-1 NFPI Fenced-In 104 acres
 2. OU-2 Black Creek Public Health Threat
 3. OU-3 NFPI Open Dump
 4. OU-4 Red Lake; Sediments and Lake Water
 5. OU-5 The Wash Below Red Lake
 6. OU-6 The former NTUA Sewer Lagoons
 7. OU-7 The Benzene in the Soil of the DEAP Charter School
 8. OU-8 Any surrounding land found to be contaminated through the operations of NFPI
2. Render all immediate hazards safe or safer
 1. The hydraulic press sump
 2. Stream bank stabilization to stop the eroding landfill
 3. FIND the hexavalent chromium
 4. Permanently close Old Rte. 31 and stop traffic passage
3. Assess the surface contamination of the site so it will be safe to bring drilling equipment out
4. Detailed site assessment to create a 3D site conceptual model for each operational unit

Meticulous Sampling is Needed Because NFPI has no Conceptual Site Model (CSM).

Within the fenced in compound:

With the exception of the diesel and gasoline contamination, we don't know where anything is. Without a CSM a cost estimate and timeline can't be determined accurately. That is why thorough assessment is needed. Detailed assessment takes time and costs money.

- Sampling from the soil from the surface to the groundwater table will yield a thorough 3-D map of contamination provided we sample for the right COCs in the correct areas.
- There's a chance it can be less contaminated than it appears to be.
- There's an equal chance it can be more contaminated than it appears to be.
- The site has sat for 25 years with sporadic cleanup efforts with years and decades in between allowing contamination to spread.

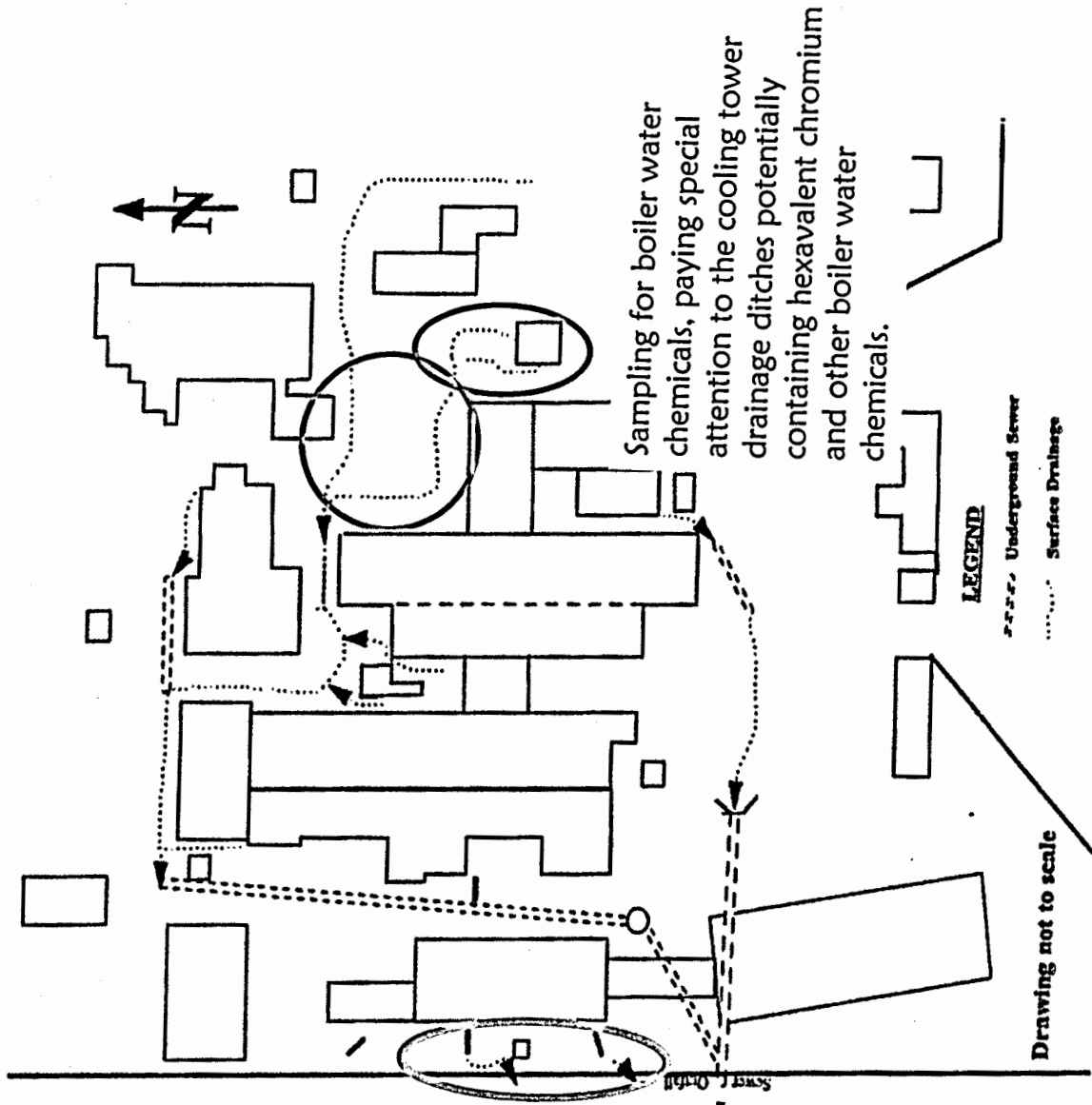
NFPI Surface Drainages

The particleboard Mfg. buildings drained into the roadside ditch of N-12.

Then under the roadway via culvert into the wash below Red Lake.

NFPI surface and building sumps drained to the former NTUA Sewer Lagoons

There is also a lagoon bypass ditch that drains directly into the wash.

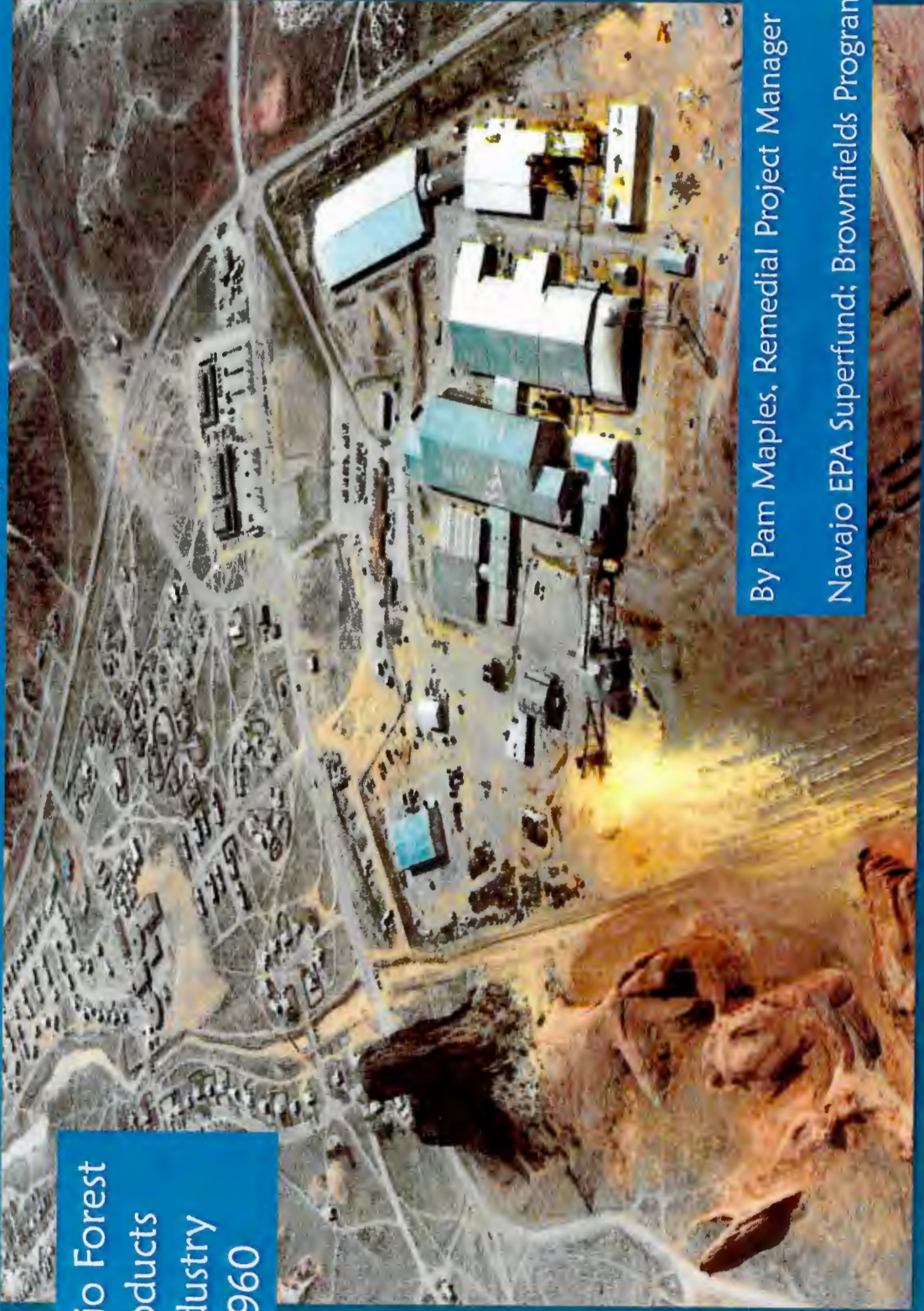


The areas outside of the fenced in compound will each need a sampling plan specific to the conditions of the area.

- Surface sampling of stream and wash sediments, sediments behind the diversion dam, and the diversion ditch using a grid to map contaminate concentrations
- Surface water sampling of the streams and the lake water
- Sampling the lake sediments will require special equipment
- The NTUA Lagoon location may require permission from NTUA
- Sampling the open dump will take specialized sampling equipment and safety equipment to not injure workers because of questionable subsurface strength due to smoldering fires throughout the years
 - Open dumps make their own chemical contaminants and water percolates through the dump
 - Contaminates such a cyanide can be created and leach out of open dumps even though none was placed into the dump.
- The debris in the dump will have to be assessed for density, contaminates, depth to surface to name a few of the criteria
- There will potentially be contamination found is the soil and groundwater beneath the dump, as well as in the stream sediments, and in the sediments of Red Lake.
- There is potentially too much waste in the open dump to transport to another facility
 - Several million cubic yards of debris will likely not be accepted by any nearby existing landfill
 - The cost of hauling is exorbitant

Navajo Forestry Products Industry Circa 1985

Navajo Forest
Products
Industry
1960



By Pam Maples, Remedial Project Manager
Navajo EPA Superfund; Brownfields Program

Navajo Forest Products Industry 2021

Polygons of Activity Areas
within the fenced in
compound will have specific
contaminates suspected due to
manufacturing activity
conducted within the buildings



Navajo Forestry Products Industry
Complete Site: 800 Acres



NAVAJO ENVIRONMENTAL PROTECTION AGENCY
proposed **EXPENDITURE PLAN** for the use of Síhasin Funds
for the assessment and remediation at the
former Navajo Forest Products Industry location

1. All Síhasin Funds approved by the Navajo Nation Council shall be used by the Navajo EPA in strict accordance with the approved Expenditure Plan governing the ongoing assessment work and environmental remediation activities at the form NFPI location.
2. All Síhasin Funds shall be used solely for planning, investigation, assessment, testing, and environmental remediation activities for the cleanup of the former NFPI location, including the purchase, installation, use, and maintenance of equipment and facilities, as necessary for the Project.
3. Under authority vested in the Navajo EPA Superfund Program by NNCERCLA, the Navajo EPA Superfund Brownfields Program shall be responsible for all planning, work, and activities related to the assessment and remediation for the Project, as well as the ongoing operation, maintenance and repairs, if any, for the Project.
4. The Navajo EPA Superfund Program shall be responsible for the administration and accounting of all funds expended for the Project by the Navajo EPA itself, and by all qualified contractors who will be selected by Navajo EPA in accordance with Navajo Nation Procurement laws and regulations.
5. Asbestos removal is the first priority. Sampling of the soil will show the extent and depth of known or discovered asbestos-contamination. This will include subsurface investigations.

Surface Asbestos has been largely remediated. For the 104 acres

Asbestos and all other Contaminates of Concern (COCs) at depth

Assessment of the site soil and groundwater from surface to about 20 feet below ground surface

This costing estimation considered ONLY 1 COC from each of the submitted samples X an average of \$50.00 per sample. Some samples will cost more; some will cost less. All costs are estimations.

Developing the SAP, QAPP, Workplan	\$100,000.00
Mobilization costs	\$20,000.00
Reporting and Deliverables costs	\$300,000.00
Direct Push rig, sampling and delivery to the lab	\$150,000.00

Using a grid developed specifically for each COC, sampling 104 acres to 20 feet depth.

Approximately 2,550 borings

Sampling every 3 feet = 6 samples per boring (the sampling interval will vary)

The bottom sample will be water or wet soil.

A temporary monitoring will be established in some borings at additional cost

\$765,000.00

Estimating cost for only one contaminate per boring from each sampling interval.

per COC

In reality there will be four to eight (or more) COCs sampled for from EACH soil/water sample submitted to the lab.

This 765K cost has the potential to increase dramatically as shown below.

Based on where the manufacturing activities occurred at the site not all COCs will be sampled for in every boring. But if:

2 contaminates sampled for in each of the soil samples the cost = \$1,530,000.00

3 contaminates sampled for in each of the soil samples the cost = \$2,295,000.00

4 contaminates sampled for in each of the soil samples the cost = \$3,060,000.00

Data validation and evaluation matrix input cost	\$50,000.00
Demobilization	\$20,000.00
Not Included: overage percent contingencies	
Estimated Cost to delineate ONE contaminate in the 104 acre portion of the site	\$2,178,330.00

NFPI Investigation and Cleanup Approximate (Very Approximate) Costs

		AVERAGE \$
NFPI Fenced-In 104 acres Sampling and Cleanup: Based on the acreages of the COC and hoping that the presence of asbestos is not ubiquitous: would be a starting point for these 104 acres.		\$200 million
NFPI Open Dump Sampling and Cleanup: Based on what other cleanup costs at sites with similar objectives have cost: all 162 acres:		\$300 - \$600 million
Black Creek : Ongoing Public Health Threat <u>Emergency Streambank Stabilization</u> to prevent further erosion of the dump, Sampling and Cleanup: Includes streambank and watercourse sediments including sediments behind the Diversion Dam, the Diversion Channel, and the Small Tributary that has eroded a channel through the dump		\$1 - 5 million
Red Lake: Sediments and Lake Water Sampling and Cleanup: Possibly another mercury-in-fish study		\$1 - \$5 million
The Wash Below Red Lake Sampling and Cleanup: For an Undetermined Length and the Ditch Leading to It from NFPI		\$1 - \$5 million
The former NTUA Sewer Lagoons Sampling and Cleanup: And the location where excavated lagoon sludge was dumped. NTUA may or may not have a closure report that includes relevant sampling		\$100,000 - \$500,000
The Benzene in the Soil of the DEAP Charter School Sampling and Cleanup: Based on findings, may need sampling and cleanup of other land adjacent to the site		\$500,000 - \$1 million
		\$660,250,000.00



THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY

SUPERFUND DIVISION P.O. BOX 2946

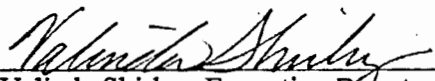
WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7993 · FAX: (928) 871-7783

EXHIBIT D



MEMORANDUM

To : Hon. Delegate Wilson Stewart, Jr
200 Parkway Administration
Window Rock, AZ 86515

From : 
Valinda Shirley, Executive Director
Navajo Nation EPA

Date : June 29, 2022

Subject: Request for Funding and Approval of the Expenditure Plan for the \$5 Million
NFPI Cleanup Funding

Navajo Nation Environmental Protection Agency urges the Navajo Nation Council to launch funding for the continued assessment and environmental remediation of the former Navajo Forest Products Industry (NFPI) site by placing \$5 million into the Navajo EPA Superfund Hazardous Waste Fund to be used exclusively for the ongoing remediation of NFPI; Also, NNEPA approves the attached Expenditure Plan. If you have and questions or need further information please contact me at 928-871-7692 or contact Pam Maples at 927-871-7187.

Thank you

Attachment 1: Proposed Expenditure Plan for the NFPI Assessment and
Remediation Fund

NAVAJO ENVIRONMENTAL PROTECTION AGENCY
proposed **EXPENDITURE PLAN** for the use of Síhasin Funds
for the assessment and remediation at the
former Navajo Forest Products Industry location

1. All Síhasin Funds approved by the Navajo Nation Council shall be used by the Navajo EPA in strict accordance with the approved Expenditure Plan governing the ongoing assessment work and environmental remediation activities at the form NFPI location.
2. All Síhasin Funds shall be used solely for planning, investigation, assessment, testing, and environmental remediation activities for the cleanup of the former NFPI location, including the purchase, installation, use, and maintenance of equipment and facilities, as necessary for the Project.
3. Under authority vested in the Navajo EPA Superfund Program by NNCERCLA, the Navajo EPA Superfund Brownfields Program shall be responsible for all planning, work, and activities related to the assessment and remediation for the Project, as well as the ongoing operation, maintenance and repairs, if any, for the Project.
4. The Navajo EPA Superfund Program shall be responsible for the administration and accounting of all funds expended for the Project by the Navajo EPA itself, and by all qualified contractors who will be selected by Navajo EPA in accordance with Navajo Nation Procurement laws and regulations.
5. Asbestos removal is the first priority. Sampling of the soil will show the extent and depth of known or discovered asbestos-contamination. This will include subsurface investigations.

Surface Asbestos has been largely remediated. For the 104 acres

Asbestos and all other Contaminates of Concern (COCs) at depth

Assessment of the site soil and groundwater from surface to about 20 feet below ground surface

This costing estimation considered ONLY 1 COC from each of the submitted samples X an average of \$50.00 per sample. Some samples will cost more; some will cost less. All costs are estimations.

Developing the SAP, QAPP, Workplan	\$100,000.00
Mobilization costs	\$20,000.00
Reporting and Deliverables costs	\$300,000.00
Direct Push rig, sampling and delivery to the lab	\$150,000.00

Using a grid developed specifically for each COC, sampling 104 acres to 20 feet depth.

Approximately 2,550 borings

Sampling every 3 feet = 6 samples per boring (the sampling interval will vary)

The bottom sample will be water or wet soil.

A temporary monitoring will be established in some borings at additional cost

**\$765,000.00
per COC**

Estimating cost for only one contaminate per boring from each sampling interval.

In reality there will be four to eight (or more) COCs sampled for from EACH soil/water sample submitted to the lab.

This 765K cost has the potential to increase dramatically as shown below.

Based on where the manufacturing activities occurred at the site not all COCs will be sampled for in every boring. But if:

2 contaminates sampled for in each of the soil samples the cost = \$1,530,000.00

3 contaminates sampled for in each of the soil samples the cost = \$2,295,000.00

4 contaminates sampled for in each of the soil samples the cost = \$3,060,000.00

Data validation and evaluation matrix input cost	\$50,000.00
Demobilization	\$20,000.00
Not Included: overage percent contingencies	
Estimated Cost to delineate ONE contaminate in the 104 acre portion of the site	\$2,178,330.00

NFPI Investigation and Cleanup Approximate (Very Approximate) Costs

		AVERAGE \$
NFPI Fenced-In 104 acres Sampling and Cleanup: Based on the acreages of the COC and hoping that the presence of asbestos is not ubiquitous: would be a <u>starting point</u> for these 104 acres.	\$200 million	\$200 million
NFPI Open Dump Sampling and Cleanup: Based on what other cleanup costs at sites with similar objectives have cost: all 162 acres:	\$300 - \$600 million	\$450 million
Black Creek : Ongoing Public Health Threat Emergency Streambank Stabilization to prevent further erosion of the dump, Sampling and Cleanup: Includes streambank and watercourse sediments including sediments behind the Diversion Dam, the Diversion Channel, and the Small Tributary that has eroded a channel through the dump	\$1 - 5 million	\$3 million
Red Lake: Sediments and Lake Water Sampling and Cleanup: Possibly another mercury-in-fish study	\$1 - \$5 million	\$3 million
The Wash Below Red Lake Sampling and Cleanup: For an Undetermined Length and the Ditch Leading to It from NFPI	\$1 - \$5 million	\$3 million
The former NTUA Sewer Lagoons Sampling and Cleanup: And the location where excavated lagoon sludge was dumped. NTUA may or may not have a closure report that includes relevant sampling	\$100,000 - \$500,000	\$250 thousand
The Benzene in the Soil of the DEAP Charter School Sampling and Cleanup: Based on findings, may need sampling and cleanup of other land adjacent to the site	\$500,000 - \$1 million	\$1 million
		\$660,250,000.00

BFJA-09-11

**RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL**

21st OF THE NAVAJO NATION COUNCIL - FOURTH YEAR, 2011

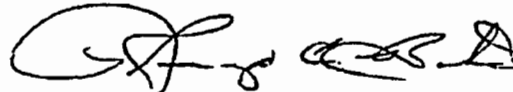
**AN ACTION
RELATING TO RESOURCES AND FINANCE; APPROVING THE NAVAJO
SUPERFUND PROGRAM'S FUND MANAGEMENT PLAN CITED IN THE NAVAJO
NATION COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND
LIABILITY ACT OF MARCH 10, 2008**

BE IT ENACTED:

1. The Navajo Nation hereby approves the Navajo Superfund Program's Fund Management Plan cited in the Navajo Nation Comprehensive Environmental response Compensation and Liability Act of March 10, 2008, as set forth in Exhibit A.

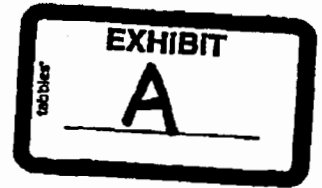
CERTIFICATION.

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the 21st Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 07 in favor, 00 opposed and 00 abstained, on this 4th of January, 2011.



LoRenzo C. Bates, Chairperson
Budget and Finance Committee

Motion: Hoskie Kee
Second: Ralph Bennett



FUND MANAGEMENT PLAN
HAZARDOUS SUBSTANCES FUND
NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY

I. Establishment

This Fund Management Plan ("FMP") provides for the establishment and administration of the Hazardous Substances Fund ("HSF") (Account Number 5510XX) and the Natural and Cultural Resources Fund ("NCRF") (Account Number 5510XX), pursuant to §§ 2701 and 2702, respectively, of the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act ("NNCERCLA" or "Act"). The funds will be administered by the Navajo Superfund Program ("NSP"), a program within the Waste Regulatory Compliance Department of the Navajo Nation Environmental Protection Agency ("NNEPA"). The Resources Committee of the Navajo Nation Council will provide legislative oversight for the two funds.

II. Purpose & Objective

The Act provides NNEPA with authority to specify requirements for responses to releases or threatened releases of hazardous substances that endanger the public health or the environment and for cleanup of abandoned or uncontrolled hazardous waste sites. NNEPA also has the authority to enforce those requirements and to require responsible parties to clean up contaminated sites. Monies in the HSF are to be used to fund the activities of the NSP in the administration, implementation, and enforcement of the NNCERCLA. In addition, when it is not possible to locate parties responsible for contaminating a site, monies in the HSF may be used to fund the clean-up. See NNCERCLA § 2701(A). The NCRF is to be used to "restore, replace or acquire natural or cultural resources equivalent to those damaged, destroyed or otherwise lost." NNCERCLA § 2702(A).

This FMP describes how monies in the funds are collected, managed, and utilized by the NSP to ensure the protection of the air, soils, surface and ground water from releases of hazardous substances from the contaminated site, and to take any other appropriate corrective actions.

III. Administration

A. FUNDING SOURCES

- (1) Revenues for Account 5110XX, the Hazardous Substances Fund, will come from the following sources:
 - a. Registration fees for transporters of hazardous substances pursuant to NNCERCLA § 2703
 - b. Tariff on transporters of hazardous substances - NNCERCLA §2704
 - c. Amounts appropriated for the NSP - NNCERCLA § 2701(B)(6)
 - d. Fees for monitoring clean-up activities ("Oversight fees") – NNCERCLA §§ 2402(E), 2504(A)(3)

- e. Application fees to participate in voluntary clean-up program pursuant to settlement of natural or cultural resource damage claims pursuant to NNCERCLA § 2402
- f. Fees and penalties recovered pursuant to administrative actions, citizen suits, and other enforcement actions - NNCERCLA § 2701(B)(7)
- g. Response costs recovered pursuant to any cost recovery actions brought under this Act - NNCERCLA § 2701(B)(8)
- h. Any payments made by a responsible party pursuant to a settlement agreement or voluntary clean-up agreement, unless funds are to be used to carry out a settlement agreement as provided in NNCERCLA § 2504(A)(5) or a voluntary clean-up agreement under §2402, or are in settlement of natural or cultural resource damage claims pursuant to NNCERCLA § 2508. -See NNCERCLA § 2504(A)(3); § 2701(B)(6), (8); § 2702(B).
- i. Funds received from any other sources for NSP implementation, but not including USEPA grants or other grant funds which by their terms must be maintained in a separate account - NNCERCLA § 2701(B)(7)

(2) Revenues for Account 5510XX, the Natural and Cultural Resources Fund, come from the following sources:

- a. Amounts received from natural or cultural resource damage claims brought under the NNCERCLA - NNCERCLA § 2702(B)
- b. Amounts from settlement of natural or cultural resource damage claims pursuant to NNCERCLA § 2508

B. RATES FOR TAXES AND FEES

The Act authorizes the following taxes and fees (rates will be established by regulation unless otherwise indicated):

<u>FEE</u>	<u>RATE</u>	<u>ACCOUNT # PLACEMENT</u>
Tariff on Transporters (Pipelines, Products with MSDS, etc.)	To be determined	5510XX
Registration Fee for Transporters (Same as Above)	\$100.00 annually	5510XX
Application Fee for VCP	To be determined	5510XX
Oversight Fees for VCP	To be determined	5510XX

C. COLLECTIONS

The taxes and fees listed in the chart above are established by the NNCERCLA and implementing regulations. The NSP will provide registration forms to transporters of hazardous substances, as that term is defined in NNCERCLA § 2703(A), and annual registration fees must be submitted with the forms. It is anticipated that transporters of hazardous substances will submit monthly forms and payment for the tariff, as well as an annual reconciliation form, pursuant to the rulemaking required in NNCERCLA § 2704.

- e. Application fees to participate in voluntary clean-up program pursuant to settlement of natural or cultural resource damage claims pursuant to NNCERCLA § 2402
 - f. Fees and penalties recovered pursuant to administrative actions, citizen suits, and other enforcement actions - NNCERCLA § 2701(B)(7)
 - g. Response costs recovered pursuant to any cost recovery actions brought under this Act - NNCERCLA § 2701(B)(8)
 - h. Any payments made by a responsible party pursuant to a settlement agreement or voluntary clean-up agreement, unless funds are to be used to carry out a settlement agreement as provided in NNCERCLA § 2504(A)(5) or a voluntary clean-up agreement under §2402, or are in settlement of natural or cultural resource damage claims pursuant to NNCERCLA § 2508. -See NNCERCLA § 2504(A)(3); § 2701(B)(6), (8); § 2702(B).
 - i. Funds received from any other sources for NSP implementation, but not including USEPA grants or other grant funds which by their terms must be maintained in a separate account - NNCERCLA § 2701(B)(7)
- (2) Revenues for Account 5510XX, the Natural and Cultural Resources Fund, come from the following sources:
- a. Amounts received from natural or cultural resource damage claims brought under the NNCERCLA - NNCERCLA § 2702(B)
 - b. Amounts from settlement of natural or cultural resource damage claims pursuant to NNCERCLA § 2508

B. RATES FOR TAXES AND FEES

The Act authorizes the following taxes and fees (rates will be established by regulation unless otherwise indicated):

<u>FEE</u>	<u>RATE</u>	<u>ACCOUNT # PLACEMENT</u>
Tariff on Transporters (Pipelines, Products with MSDS, etc.)	To be determined	5510XX
Registration Fee for Transporters (Same as Above)	\$100.00 annually	5510XX
Application Fee for VCP	To be determined	5510XX
Oversight Fees for VCP	To be determined	5510XX

C. COLLECTIONS

The taxes and fees listed in the chart above are established by the NNCERCLA and implementing regulations. The NSP will provide registration forms to transporters of hazardous substances, as that term is defined in NNCERCLA § 2703(A), and annual registration fees must be submitted with the forms. It is anticipated that transporters of hazardous substances will submit monthly forms and payment for the tariff, as well as an annual reconciliation form, pursuant to the rulemaking required in NNCERCLA § 2704.

An application fee will be charged when an owner or operator applies to participate in the voluntary clean-up program. Once the application and a corrective action plan are approved, the NSP will charge an oversight fee to monitor the cleanup.

Each account will be invoiced a late fee based on current interest rates and/or a bounced check fee of \$12.00 per check.

D. DEPOSIT INTO ACCOUNTS

When checks are received by the NSP, the NSP Accounting Clerk will enter the name of the payer, address, amount of check, and name of the financial institution onto a general ledger form. The Accounting Clerk also will indicate on the general ledger form the account into which the funds should be deposited. The Accounting Clerk then will hand deliver the general ledger form to the NNEPA Principal Contract Analyst for review, who will sign the general ledger to confirm the total amount that will be deposited into one or the other of the two accounts described above. The general ledger form is hand-delivered to the NNEPA Executive Director for signature. The NSP Accounting Clerk copies all the checks and the general ledger form and hand-delivers the general ledger form and the checks to Accounts Receivable. The amounts will then be deposited into the appropriate account, as described above, and a deposit slip for the amount will be issued to the NSP Accounting Clerk.

E. EXPENDITURE OF FUNDS

Expenditures of the funds from Account 5510XX and Account 5510XX will be made in accordance with the requirements of the Act.

ACCOUNT 5510XX: Funds under this account will be expended, pursuant to Section 2701 of the Act, for the administration, implementation, and enforcement of the Act, including the funding of response actions taken under the Act when other sources of funds are not available.

(1) The Act provides the following requirements for response actions:

a. Corrective Actions

The Director is authorized to:

1. Require the owner or operator of a contaminated site to undertake corrective action with respect to any release of a regulated substance when the Director determines that such corrective action will be done properly and promptly by the owner or operator of the contaminated site from which the release occurs (see § 2504); or
2. Undertake corrective actions, under the general response authority in § 2401 and utilizing available funds from the Hazardous Substance Fund, with respect to any release of a regulated substance into the environment only if such action is necessary, in the judgment of the Director, to protect human

health and the environment. In addition, the Director shall undertake corrective actions if the criteria under Section 2401 are satisfied and one or more of the following situations exist:

- A. No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is-
 - i. An owner or operator of the site of concern, and
 - ii. Capable of carrying out such corrective action properly, either financially or otherwise;
 - B. A situation exists which requires prompt action by the Director to protect human health and the environment, and
 - C. The owner or operator of the contaminated site has failed or refused to comply with an order of the Director to comply with corrective action requirements.
3. Undertake the removal of the contaminated site, pursuant to § 2401, when in the judgment of the Director, said removal is necessary to protect human health, safety or the environment and sufficient funds exist in the Hazardous Substance Fund account.

b. Priority for Corrective Actions

Pursuant to § 2304, the Director shall give priority in undertaking corrective actions and in issuing orders requiring owners or operators to undertake such actions to releases of regulated substances from its sources which pose the greatest threat to human health and the environment.

c. Corrective Action Orders

The Administrator is authorized under § 2403 to issue orders to the owner or operator of a contaminated site to carry out the Act or implementing regulations.

d. Allowable Corrective Actions

There is broad authority in §§ 2305 and 2401 as to the types of corrective action the Director may take. In addition to remediation, these actions may include, for example, temporary or permanent relocation of residents (or temporary closure of business where necessary to protect the public health) and the establishment of alternative household or public water supplies. In connection with the performance of any corrective action under Section 2305 of the Act, the Director may undertake an exposure assessment. The cost of any such assessment may be treated as corrective action for purposes of Section 2305 of the Act related to cost recovery.

e. **Recovery of Costs**

1. **In General**

Whenever costs have been incurred by the Director for undertaking corrective action or enforcement action with respect to the release of a regulated substance from a contaminated source, the owner or operator of such sources shall be liable to the Director, pursuant to §§ 2501 and 2503. Section 2501(B) provides that there is joint and several liability, and the Director may use funds from the Hazardous Substance Fund to pursue recovery of cost, as provided in § 2701(A).

2. **Effect on Liability**

A. **No Transfer of Liability**

Pursuant to § 2501(C)(1), no indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability from the owner or operator of any contaminated site or from any person who may be liable for a release or threat of release to any other person. Nothing in Section 2501 shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under Section 2501 of the Act.

B. **No Bar to Cause of Action**

Pursuant to § 2501(C)(2), nothing in the Act, including the provisions of Section 2501 of the Act, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section 2501 of the Act, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

f. **Emergency Procurement Powers**

Pursuant to § 2105(C), notwithstanding any other provision of law, the Director may authorize the use of such emergency procurement powers as he or she deems necessary.

g. **Facilities Owned by the Federal Government or the Navajo Nation, Facilities not Subject to Tariffs, and Facilities not in Compliance with the Tariff Requirements**

Pursuant to Section 2701(C), the Director shall expend no monies from the Hazardous Substance Fund to clean up releases at any facility owned by the federal government or the Navajo Nation or its entities (excluding tribal enterprises), any facility not subject to tariffs under the Act, or any facility that has failed to pay any tariffs owed under the Act when due. At such facilities the Director shall use the

authorities provided in the Act to order corrective action to clean up such releases. Notwithstanding the provisions of Section 2701(C) of the Act, the Director may use monies from the fund to take the corrective actions authorized by Sections 2305 and 2401 of the Act to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of Sections 2501 and 2503 of the Act and without consideration of the defenses to liability in Section 2502(A) of the Act. Nothing in Section 2701 of the Act shall prevent the Director from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

- (2) Expenditures to administer and implement the Act will include, but will not be limited to the following:

- 1000 Personnel and Fringe Benefits
Technical Staff
- 3000 Travel Expenses
Personal Travel Expenses, Vehicle Rental and Mileage
- 4000 Supplies
Expendable Office Supplies
- 5000 Lease, Communications, and Utilities
Equipment Rental, Communication Expenses, Data Processing, and Software Support
- 6000 Repairs and Maintenance
Calibration of Monitoring Instruments
- 6500 Contractual Services and Special Transactions
Registration Fees, Advertising, Medical Monitoring, and Other Services
Consultant Fees and Expenses for Archaeological Clearances and Monitoring
Consultant Fees and Expenses for Geo and Electromagnetic Surveys and Reports
- 9000 Capital Expenditures
Equipment, Furniture, Computers, Real Property, and Vehicles

ACCOUNT 5510XX: Funds under this account will be expended, pursuant to Section 2702 of the Act, to restore, replace, or acquire natural or cultural resources equivalent to those damaged or otherwise lost.

F. PERIODIC REVIEW

The Executive Director, Environmental Department Manager, and Principal Contract Analyst will review expenditures on a quarterly basis. The Executive Director, Environmental Manager or designee will report to the Resources Committee and the Navajo Nation Council annually.

Quarterly meetings will also be held with the Navajo Nation Tax Commission to confirm and compare information pertaining to the tariff on transporters of hazardous substances.

The Navajo Nation Business Preference and Navajo Nation financial requirements shall apply to all purchases and procurement of supplies, goods, consultant and contractual services.

On a biannual basis, an audit will be requested of all financial transactions utilizing the services of either the Navajo Nation Auditor General and/or private auditing firm.

G. FORMS

The following forms have been prepared for recording payments to the Hazardous Substance Fund and the Natural and Cultural Resources Fund, including payments made pursuant to settlement agreements:

Exhibit A: Itemization of Funds Paid to the HSF

Exhibit B: Itemization of Funds Paid to the NCRF

Exhibit C: Report to Finance Division of Total Payments to the HSF

Exhibit D: Report to Finance Division of Total Payments to the NCRF

Exhibit E: Invoice to Owners for Investigation and Response Costs under Settlement Authority

Attachment 1: Oversight Fee Information Form for Settlement Agreements

Attachment 2: Cost Recovery Information Form for Settlement Agreements

Exhibit F: Settlement Payment Form

Exhibit G: Flowchart for the Process of Collection and Deposition of Revenues & Fees

IV. Amendments

Sections I through III may be amended from time to time by the Budget and Finance Committee pursuant to recommendations from the Resources Committee of the Navajo Nation.

NAVAJO NATION

1233

12/19/2022

Navajo Nation Council Special Session

02:40:05 PM

Amd# to Amd#

Legislation 0110-22: Allocating

PASSED

MOT Tso, E

\$5,000,000 from the Sihasin Fund

SEC Begay, P

for the Assessment and

Remediation of the Former....

Yeas : 19

Nays : 1

Excused : 2

Not Voting : 1

Yea : 19

Begay, E

Crotty

Nez, R

Tso, E

Begay, K

Daniels

Slater, C

Walker, T

Begay, P

Freeland, M

Smith

Wauneka, E

Brown

Halona, P

Stewart, W

Yazzie

Charles-Newton

James, V

Tso, D

Nay : 1

Yellowhair

Excused : 2

Damon

Tso

Not Voting : 1

Tso, C

Presiding Speaker: Henio, J