

**STATE APPLICABLE OR RELEVANT AND APPROPRIATE
REQUIREMENTS FOR THE BLACK SWAN REMOVAL ACTION¹**

CHEMICAL SPECIFIC REQUIREMENTS			
Chemical	Requirements	Prerequisite	Citation
1. Arsenic, cadmium, and manganese ²	This regulation establishes statewide surface water quality standards for acceptable concentrations of specified parameters including chemical constituents and pH. The regulation also establishes methodologies for assigning and implementing those standards. <i>EPA Comment:</i> This will not be complied with because it is beyond the scope of the proposed removal action (<i>i.e.</i>, no surface water treatment)	Chemical constituents in surface water at concentrations above state surface water standards.	Colorado Basic Standards and Methodologies for Surface Water, 5 CCR 1002-31, pursuant to C.R.S. § 25-8-101 <i>et seq.</i>
2. Arsenic, cadmium, and manganese	This regulation assigns segment specific classifications and numeric surface water quality standards chemical constituents, including	Chemical constituents in surface water at concentrations above state surface water standards.	Colorado Surface Water Quality Classifications and Numeric Standards, 5 CCR 1002-38,

¹ Consistent with Section V (Conclusions of Law and Determinations), Paragraph 16(g) and Section XI (Compliance with Other Laws) of the Administrative Settlement Agreement and Order on Consent for Removal Action at Orphan Mine Site, Paragraph 32, EPA has determined, based on the administrative record, that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, as a result of the Work is not practicable as provided in 40 CFR § 300.415(j). Given that attainment of water quality standards as a result of the Work is not practicable, the Good Samaritan will comply with Section 1.2.1 of the Work Plan that address water quality issues in order to ensure environmental improvement at the Property.

² Mining features at the Site likely have elevated concentrations for arsenic, cadmium, and manganese typically found in mined waste rock and tailings.

	arsenic and cyanide, in surface waters within the South Platte River Basin. <i>EPA Comment:</i> This will not be complied with because it is beyond the scope of the proposed removal action (<i>i.e.</i>, no surface water treatment)		pursuant to C.R.S. §§ 25-8-203 and 204
3. Arsenic, cadmium, and manganese	Establishes groundwater classifications, specific water quality standards for classified groundwater, and an interim narrative standard for unclassified groundwater. <i>EPA Comment:</i> This will not be complied with because it is beyond the scope of the proposed removal action (<i>i.e.</i>, no groundwater treatment)	Chemical constituents in groundwater at concentrations above state groundwater water standards.	Colorado Basic Standards for Groundwater, 5 CCR 1002-41, pursuant to CRS § 25-8-101 <i>et seq.</i>

ACTION SPECIFIC REQUIREMENTS			
Action	Requirements	Prerequisite	Citation
4. Handling mine waste materials	<i>Relevant and Appropriate.</i> The MLRB Regulations require reclamation of permitted mined lands. Reclamation is defined as “employment of procedures reasonably designed to minimize as much as practicable the disruption from mining operations and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands.” <i>EPA Comment:</i> EPA agrees that this is relevant and appropriate, practicable, and within the scope of the proposed removal action. In accordance with CERCLA section 121, 42 U.S.C. § 9621, no approval from, or coordination with, the Mined Land Reclamation Board, the Office of Mined Land Reclamation or the Division of Reclamation Mining and Safety shall be required. No Financial Warranty shall be required with respect to any portion or aspect of the Work.	Performing response actions similar to reclamation activities required under a MLRB-permitted mining operation. ³	Colorado Mined Land Reclamation Board Regulations ⁴ (“MLRB Regulations”), Reclamation Performance Standards, 2 C.C.R. 407-1, Rule 1.1 (Definitions) and Rule 3.1.5, subsections (1)-(9) (Materials Handling), pursuant to the Colorado Mined Land Reclamation Act, C.R.S. § 34-32-101 <i>et seq.</i>

³ While not applicable, these regulations address activities sufficiently similar to those proposed in the removal action and are well suited to achieve and maintain protectiveness during and after the removal action.

⁴ MLRB Regulations are available on-line at <http://mining.state.co.us/SiteCollectionDocuments/Hard%20Rock%20Rules%20Adopted%20January%2015.pdf>.

5. Handling mine waste materials	Acid forming or toxic producing mined materials must be handled in a manner that will control unsightliness and protect the surface and groundwater drainage system from pollution. <i>EPA Comment:</i> Rule 3.1.5, subsection (5). EPA agrees that subsection (5) is relevant and appropriate, practicable, and within the scope of the proposed removal action; however, subsection (5) is covered immediately above and, thus, is redundant here. Rule 3.1.5, subsection (10). This subsection will not be complied with because it is beyond the scope of the proposed removal action (<i>i.e.</i>, no on-site disposal because mine waste material will be disposed of at off-site facility) Rule 3.1.5, subsection (11). It is EPA's position that this subsection must be read in the context of Section V (Conclusions of Law and Determinations), Paragraph 16(g) and Section XI (Compliance with Other Laws), Paragraph 32, of the Administrative Settlement Agreement and Order on Consent for Removal Action at Orphan Mine Site, which state EPA has determined, based on the administrative record, that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable as provided in 40 CFR § 300.415(j). Given that attainment of	Performing response actions similar to reclamation activities constituting handling of acid forming or toxic producing mined materials.	MLRB Regulations Rule 3.1.5(5), (10), (11)
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	water quality standards as a result of the Work is not practicable, the Good Samaritan will comply with Section 1.2.1 of the Work Plan that address water quality issues in order to ensure environmental improvement at the Property.		
6. Handling mine waste materials	<i>Relevant and Appropriate.</i> Reclamation activities must minimize disturbances to the prevailing hydrologic balance of the mined land and surrounding area by complying with all laws pertaining to water rights, water quality⁵ and dredge and fill activities.⁶ Minimizing measures also include removing temporary or large siltation structures from drainageways after stabilization and rehabilitation. <i>EPA Comment:</i> EPA agrees that this is relevant and appropriate, practicable, and within the scope of the proposed removal action. The Good Samaritan will be engaged in dredge & fill activities per USACE nationwide permit requirements.	Performing response actions similar to mining reclamation activities that may affect surface water quality.	MLRB Regulations Rule 3.1.6
7. Handling mine waste materials	Reclamation activities that may affect the quality of any groundwater must comply with all state wide groundwater quality standards and standards for classified areas. For unclassified areas, reclamation activities must protect the existing and reasonably potential future uses of such groundwater.	Performing response actions similar to mining reclamation activities that may affect ground water quality.	MLRB Regulations Rule 3.1.7

⁵ Colorado regulations pertaining to surface quality are implicated by this MLRB Regulation provision and are identified below.

⁶ This MLRB Regulation provision also implicates the federal Clean Water Act's Section 404 dredge and fill requirements as applicable ARARs for this response action.

	<i>EPA Comment:</i> This will not be complied with because it is beyond the scope of the proposed removal action (i.e., no groundwater treatment).		
8. Handling mine waste materials	<i>Relevant and Appropriate.</i> Reclamation activities must take into account the safety and protection of wildlife on the mined site and along access roads with special attention given to critical periods in the life cycle of species requiring special consideration (elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds). <i>EPA Comment:</i> EPA agrees that this is relevant and appropriate, practicable, and within the scope of the proposed removal action. The Good Samaritan has consulted with U.S. Fish & Wildlife Agency, and performed a NEPA analysis as part of the HUD funding process.	Performing response actions similar to reclamation activities in relevant wildlife habitat during critical periods.	MRLB Regulations Rule 3.1.8
9. Handling mine waste materials	<i>Applicable.</i> Must use integrated methods established by the Boulder County Commissioners to manage noxious weeds. <i>EPA Comment:</i> EPA agrees that this is applicable, practicable, and within the scope of the proposed removal action.	Performing activities that could introduce or cultivate noxious weeds.	Colorado Noxious Weed Act and Boulder County Noxious Weed regulations, CRS § 35-5.5-101-119; 8 CCR 1206-2
10. Discharging stormwater	<i>Relevant and Appropriate (Because Anticipated Excavation < 1 Acre).</i> Requires implementing management controls through defined “general limitations” and “best management practices” for stormwater	Discharging stormwater from a small construction activity.	Colorado Discharge Permit System Regulations, 5 CCR 1002-61.3(2)(a) and

	pollution prevention pursuant to Colorado Discharge Permit System general permit COR0300000.⁷ This permit applies to stormwater discharges from small construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. <i>EPA Comment:</i> EPA agrees that this is relevant and appropriate, practicable, and within the scope of the proposed removal action.		(f)(ii), and CDPS general permit No. COR0300000 (Stormwater discharges associated with construction activity), pursuant to CRS § 25-8-501
11. Excavation and hauling of mine waste materials	Applicable. Requires control measures to manage fugitive emissions from construction activities, storage and stockpiling activities, haul trucks and tailings ponds. <i>EPA Comment:</i> EPA agrees that this is applicable, practicable, and within the scope of the proposed removal action.	Performing construction, storage, stockpiling or hauling activities generating fugitive dust.	Colorado Fugitive Dust Control Plan/Opacity, Regulation No. 1., 5 CCR 1001-3, pursuant to Colorado Air Pollution Prevention and Control Act, CRS § 25-7-101 <i>et seq.</i>

⁷ If greater than one acre but less than five acres are disturbed from the response action, the substantive requirements of this permit are applicable to the response action pursuant to 5 CCR 1002-61.3(2)(a) and (f)(ii). If less than one acre is disturbed from the response action, the substantive requirements of this permit are relevant and appropriate.

12. Characterizing for disposal of mine waste materials off-site	<i>Relevant and Appropriate.</i> This regulation identifies solid wastes subject to regulation as a hazardous waste under the Colorado Hazardous Waste Act and Regulations. A solid waste meeting the criteria for hazardous waste must be handled and disposed of in accordance with other parts of the Hazardous Waste Regulations unless it is otherwise excluded from Regulation. <i>EPA Comment:</i> ARARs only apply to on-site activities. Therefore, EPA modified the description to address on-site characterization activities. As modified, EPA believes that this is relevant and appropriate, practicable, and within the scope of the proposed removal action.	Handling and disposing of hazardous waste. ⁸	Colorado Hazardous Waste Regulations, Identification and listing of Hazardous Waste, 6 C.C.R. 1007-3 Part 261, pursuant to the Colorado Hazardous Waste Act, C.R.S. § 25-15-101 et seq.
13. Leaving waste in place above unrestricted use standards	Requires environmental covenants (ECs) or notice of environmental use restrictions (RNs) whenever residual contamination not safe for all uses is left in place or an engineered feature or structure that requires monitoring, maintenance, or operation is included in the remedy. <i>EPA Comment:</i>	Performing response activities leaving waste in place above standards for unrestricted use or incorporating engineered features or structures.	Colorado Environmental Covenants Statute, CRS § 25-15-317 et seq.

⁸ The mine waste has been derived directly or indirectly from extraction of ore and thus meet the exclusion requirements for identification as a hazardous waste indicated in 6 C.C.R. 1007-3 § 261.4(b)(7) commonly known as the “Bevill” exclusion. For off-site disposal purposes, these regulations are relevant and appropriate for characterizing any solid wastes prior to off-site shipment and acceptance at a regulated solid waste disposal facility. The mine waste materials meet the Colorado Solid Waste Sites and Facilities Act and Regulations definition of “solid waste.”

	EPA does not believe that the Colorado Environmental Covenants Statute is an ARAR. This will not be complied with because it is beyond the scope of the proposed removal action.		
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LOCATION SPECIFIC REQUIREMENTS			
Location	Requirements	Prerequisite	Citation
14. Relevant Wildlife Habitat	<i>Relevant and Appropriate.</i> Reclamation activities must take into account the safety and protection of wildlife on the mined site and along access roads with special attention given to critical periods in the life cycle of species requiring special consideration (elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds). <i>EPA Comment:</i> EPA agrees that this is relevant and appropriate, practicable, and within the scope of the proposed removal action.	Performing reclamation activities in relevant wildlife habitat during critical periods.	MRLB Regulations Rule 3.1.8
15. Relevant Land Use Zone	<i>Relevant and Appropriate.</i> Requires compliance with maximum permissible noise levels for particular time periods and land use zones. <i>EPA Comment:</i> EPA agrees that this is relevant and appropriate, practicable, and within the scope of the proposed removal action with the understanding that the proposed removal action will take place in a "designated land use zone subject to noise regulation."	Location of removal activities is within a designated land use zone subject to noise regulation.	Colorado Noise Abatement Statute, CRS § 25-12-101 <i>et seq.</i>