

**STATE APPLICABLE OR RELEVANT AND APPROPRIATE
REQUIREMENTS FOR THE NELSON TUNNEL PROPOSED
TIME CRITICAL REMOVAL ACTION**

ACTION SPECIFIC REQUIREMENTS			
Action	Requirements	Prerequisite	Citation
Debris handling and disposal within tunnel	<p>Establishes minimum requirements for all activities meeting the regulatory definition of “solid waste disposal” including the storage, utilization, processing or final disposal of solid wastes. Minimum requirements include preventing water pollution, constructing and maintaining a run-on control system, controlling nuisance conditions, minimizing windblown debris and restricting access.</p> <p>EPA’s response: Based on footnote 1, EPA understands that compliance with the mined land reclamation performance standards satisfies compliance with the Solid Waste Disposal Sites and Facilities Regulations.</p>	Performing actions constituting disposal of solid waste as defined in the Solid Waste Regulations. ¹	Colorado Solid Waste Disposal Sites and Facilities Regulations, 6 CCR 1007-2, section 1 (general provisions) and section 2 (minimum standards) pursuant to the Colorado Solid Waste Sites and Facilities Act, C.R.S. § 30-20-100.5 <i>et seq.</i>

¹ Pursuant to the Solid Wastes Disposal Sites and Facilities Act, C.R.S. § 30-20-102(4), mining operations, including reclamation activities, with approved reclamation plans under a Colorado Mined Land Reclamation Board (MLRB) permit may dispose of solid wastes generated by such operations within the permitted area without obtaining a Certificate of Designation. CDPHE interprets this provision to exempt CERCLA response actions similar to mined land reclamation activities described in the MLRB’s Regulations, 2 C.C.R. 407-1 Rule 3 (Reclamation Performance Standards), from Colorado’s regulations pertaining to solid waste disposal. This interpretation is contingent upon the MLRB Reclamation Performance Standards being recognized as relevant and appropriate state ARARs for identification purposes.

	<p>The MLRB Regulations require reclamation of permitted mined lands, 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. Reclamation must be conducted in accordance with the performance standards in Rule 3 of the Regulation.</p> <p>EPA’s Response: EPA believes 3.1.5 (5), (10), and (11), requiring proper management of materials so as to prevent pollution of the drainage systems, are relevant and appropriate and within the scope of this removal action.</p>	<p>Performing response actions similar to reclamation activities required under a MLRB-permitted mining operation. ²</p>	<p>Colorado Mined Land Reclamation Board Regulations (“MLRB Regulations”), Reclamation Performance Standards, 2 C.C.R. 407-1, Rule 1.1 (definitions) and Rule 3 (Reclamation Performance Standards, pursuant to the Colorado Mined Land Reclamation Act, C.R.S. § 34-32-101 <i>et seq.</i></p>
	<p>Acid forming or toxic producing mined materials must be handled and disposed in a manner that will control unsightliness and protect the surface and groundwater drainage system from pollution.</p> <p>EPA’s Response: EPA agrees this is</p>	<p>Performing response actions similar to reclamation activities constituting handling and disposal of acid forming or toxic producing</p>	<p>MLRB Regulations Rule 3.1.5(5), (10), (11),</p>

² 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.

	relevant and appropriate, and practicable.	mined materials. ³	
	<p>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 quality⁴ and dredge and fill activities⁵. Minimizing measures also include removing temporary or large siltation structures from drainageways after stabilization and rehabilitation.</p> <p>EPA's Response: This action is intended to keep water moving through the system and preserve the status quo within the tunnels. Neither water treatment nor dredge and fill activities are within the scope of this removal action. Water rights, water quality, and dredge and fill</p>	Performing response actions similar to reclamation activities that may affect surface water quality.	MLRB Regulations Rule 3.1.6

³ Disposal is not defined in the MLRB Regulations. The Colorado Solid Waste Regulations define "solid waste disposal" as the storage, treatment, utilization, processing or final disposal of solid wastes. Mined wastes addressed in the MLRB Regulations meet the solid waste Regulations definition of solid waste.

⁴ Colorado regulations pertaining to surface and groundwater quality are implicated by this MLRB Regulation provision and are identified below.

⁵ This MLRB Regulation provision implicates the federal Clean Water Act's Section 404 dredge and fill requirements as applicable ARARs for this response action.

	activities are all beyond the scope of this action.		
	<p>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.</p> <p>EPA's Response: Groundwater quality is beyond the scope of this removal action.</p>	Performing response actions similar to reclamation activities that may affect ground water quality.	MLRB Regulations Rule 3.1.7
	<p>Establishes Statewide water quality standards that are used in developing point source discharge effluent limitations under Colorado Water Quality Regulation No. 62 identified below.</p> <p>EPA's Response: Water treatment is beyond the scope of this removal action.</p>	Discharging a pollutant from a point source to waters of the State.	Colorado Basic Standards and Methodologies for Surface Water, 5 CCR 1002-31, pursuant to C.R.S. § 25-8-101 <i>et seq.</i>
	Assigns segment specific classifications and numeric water quality standards for surface waters in the Rio Grande basin. These standards are used in developing point source discharge effluent limitations under	Discharging a pollutant from a point source to waters of the State.	Colorado Surface Water Quality Classifications and Numeric Standards, 5 CCR 1002-36, pursuant to C.R.S. §§ 25-8-203 and 204

	<p>Colorado Water Quality Regulation No. 62 identified below.</p> <p>EPA's Response: Water treatment is beyond the scope of this removal action.</p>		
	<p>Colorado's discharge permit system regulations apply to persons discharging pollutants from a point source into waters of the State. Permits contain effluent limitations determined pursuant to Colorado Water Quality Regulation No. 62 identified below. The substantive provisions of this Regulation are applicable to the response action.</p> <p>EPA's Response: Water treatment is beyond the scope of this action. While the site is actively discharging water, the water quality of the effluent is beyond the scope of this removal action.</p>	Discharging a pollutant from a point source to waters of the State.	Colorado Discharge Permit System Regulations, 5 CCR 1002-61, pursuant to CRS § 25-8-501
	<p>Sets numeric concentrations and other limits for point source discharges resulting from the response actions.</p> <p>EPA's Response: Water treatment is beyond the scope of this removal action.</p>	Discharging a pollutant from a point source to waters of the State.	Colorado Effluent Limitations, 5 CCR 1002-62, pursuant to CRS § 25-8-205

	<p>Establishes groundwater classifications, specific water quality standards for classified groundwater, and an interim narrative standard for unclassified groundwater. These standards are used in developing point source discharge effluent limitations under Colorado Water Quality Regulation No. 62 identified below.</p> <p>EPA's Response: Water treatment is beyond the scope of this removal action.</p>	Discharging a pollutant from a point source to waters of the State.	Colorado Basic Standards for Groundwater, 5 CCR 1002-41, pursuant to CRS § 25-8-101 <i>et seq.</i>
Tunnel Debris Off-site Disposal	<p>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.</p> <p>EPA's Response: EPA agrees this is applicable and within the scope of this removal action.</p>	Handling and disposing of hazardous waste. ⁶	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 <i>et seq.</i>

⁶ The tunnel debris 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.

Portal stabilization	<p>Requires control measures to manage fugitive emissions from construction activities, storage and stockpiling activities, haul trucks and tailings ponds.</p> <p>EPA's Response: EPA agrees this is relevant and appropriate and practicable.</p>	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>
	<p>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).</p> <p>EPA's Response: None of the activities will take place above ground and this requirement seems to be beyond the scope of this removal action. That said, this does not preclude the OSC from consulting land and resource management trustees on the proposed action. If the state has specific concerns about wildlife or habitat impacts for the work in the area surrounding the portal, these concerns should be conveyed to the OSC directly by the appropriate trustee agency.</p>	Performing response actions similar to reclamation activities in relevant wildlife habitat during critical periods.	MRLB Regulations Rule 3.1.8

Leaving waste in place above unrestricted use standards (in tunnel) and incorporating engineered features (tunnel and portal stabilization structures)	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. EPA's Response: EPA does not believe this is an ARAR.	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 <i>et seq.</i>
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LOCATION SPECIFIC REQUIREMENTS

Location	Requirements	Prerequisite	Citation
Relevant Wildlife Habitat	<p>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).</p> <p>EPA's Response: There are no roads on-site. The only work occurring outside of the tunnel is support work. EPA does not think this is either applicable or relevant and appropriate.</p>	Performing reclamation activities in relevant wildlife habitat during critical periods.	MRLB Regulations Rule 3.1.8
Relevant Land Use Zone	<p>Requires compliance with maximum permissible noise levels for particular time periods and land use zones.</p> <p>EPA's Response: EPA agrees this is relevant and appropriate and practicable.</p>	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>