

**INTERLOCAL COOPERATIVE TETRACHLOROETHENE INVESTIGATION AGREEMENT  
BY AND BETWEEN**

State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection,  
Bureau of Corrective Actions  
901 S. Stewart Street, Carson City, NV 89701-5249  
Phone: (775) 687-9368 Contact: Kim Valdez

And

The County of Washoe, Acting By and Through Its Community Services Department,  
Central Truckee Meadows Remediation District Program  
1001 E. Ninth Street, Building C, Room C130  
Reno, NV 89512  
Phone: (775) 954-4637 Contact: Brian Bass

This Interlocal Cooperative Tetrachloroethene Investigation Agreement is between the Nevada Division of Environmental Protection, a division of Nevada's Department of Conservation and Natural Resources ("NDEP") and the Central Truckee Meadows Remediation District, a Washoe County remediation district ("CTMRD," together with NDEP, the "Parties").

**WHEREAS**, NRS 277.110(2) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action under the provisions of NRS 277.080 to 277.170, inclusive;

**WHEREAS**, the Parties hereto are public agencies as defined in NRS 277.100(1)(a), (b);

**WHEREAS**, it is the policy of this State to maintain the quality of waters of the State consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, the pursuit of agriculture, and the economic development of the State; and to encourage and promote the use of methods of waste collection and pollution control for all significant sources of water pollution (NRS 445A.305);

**WHEREAS**, the NDEP is responsible for implementation of NRS 445A.300 – 445A.730, inclusive, known as the Nevada Water Pollution Control Law, and the regulations adopted by the State Environmental Commission pursuant thereto;

**WHEREAS**, under NRS Chapter 540A, an eligible board of county commissioners can create a district for remediation of the quality of water and prepare a plan for remediation that "may include any action which is reasonable and economically feasible in the event of the release or threat of release of any hazardous substance into the environment which may affect the water quality" in the State of Nevada.

**WHEREAS**, the CTMRD was created in 1997 by Washoe County Ordinance 1000, pursuant to NRS Chapter 540A passed in 1995, to address the presence of tetrachloroethene (PCE) in groundwater in Reno and Sparks, and is responsible for operating under the provisions of NRS 540A.250 to 285, inclusive;

**WHEREAS**, the CTMRD program efforts are focused on: mitigating PCE contamination existing in groundwater at the time the CTMRD was created and for which a party who caused or contributed to that contamination can't be identified; preventing additional PCE contamination from occurring; protecting the aquifer system that is not contaminated with PCE; and, informing stakeholder agencies and the public of CTMRD activities;

**WHEREAS**, pursuant to NRS 540A.280 the NDEP is a partner with the CTMRD. If CTMRD, during an investigation to establish a boundary of a district for remediation, development of a plan for remediation or the carrying out of the plan, acquires evidence that a person has caused or contributed to the condition requiring remediation, CTMRD must provide the evidence to the NDEP for appropriate action. Further, the NDEP may by legal action recover from the person responsible for the costs of remediation;

**WHEREAS**, in the performance of its potential source area investigation functions under the approved Remediation Management Plan, the CTMRD discovered an area of elevated PCE in soil gas and groundwater referred to as the Kietzke High Mass Area (KHMA);

**WHEREAS**, analysis of the data by CTMRD indicates the PCE most likely originates on private property owned by Dean Foods Company (Dean Foods);

**WHEREAS**, in accordance with NRS 540A.280, the CTMRD provided its investigative findings (the "source referral") as evidence regarding Dean Foods to NDEP on April 29, 2016;

**WHEREAS**, Dean Foods prepared and submitted to the NDEP a *Cause or Contribute Demonstration Report* dated December 1, 2017 to document historical activities that occurred on the tracts of land owned by Dean Foods in the vicinity of the Kietzke High Mass Area. The conclusions of the Report by Dean Foods was that they had not "significantly caused or contributed to the PCE contamination observed in the Kietzke High Mass Area" as defined in NRS 540A.260(4) and 540A.280(1). In correspondence from the NDEP to Dean Foods dated February 27, 2018, the NDEP did not concur with the conclusions presented in the Report.

**WHEREAS**, NDEP concurs that, based on the source referral, further assessment of the KHMA on the Dean Foods property is warranted. Accordingly, the CTMRD has developed a work plan to perform additional investigation on such property and the NDEP has approved that work plan;

**WHEREAS**, the Parties agree to work together in good faith using a collaborative approach to determine if there is a source of PCE on the Dean Food's property contributing to the KHMA. The work activities to be performed by CTMRD will include a passive soil gas (PSG) survey, the installation of four nested active soil gas (ASG) well pairs, and two smear zone/groundwater monitoring well pairs, and subsequent ASG and groundwater monitoring and sampling;

**WHEREAS**, the investigation will aid the NDEP and CTMRD in assessing PCE concentrations and mass distribution in the vadose zone, as well as the PCE concentrations in groundwater associated with the KHMA;

**WHEREAS**, the Parties understand that the activities on Dean Foods' Property to characterize PCE distribution there and to better understand PCE distribution in the Kietzke High Mass Area may lead to additional activities, including but not limited to detailed assessment, remedy evaluation, and remedy

implementation. It is the goal and intention of the Parties to use this Agreement and the work activities it envisions as a model of collaborative effort for future project requirements and to include Dean Foods, as appropriate, in future agreements.

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are fully incorporated into this agreement by this reference, the Parties mutually agree to the following terms and conditions contained within this Interlocal Cooperative Agreement (Agreement).

## **I. BACKGROUND AND INTENT**

The intent of the Agreement is for the Parties to collaboratively work together to perform additional investigation as warranted on or around the Dean Food's property to further define the sources of PCE found on the property.

## **II. PARTIES & ROLES**

- A. The *Parties* to this Agreement are the Nevada Division of Environmental Protection (NDEP), the County of Washoe, Acting By and Through Its Community Services Department, Central Truckee Meadows Remediation District Program (CTMRD). Herein, these entities in sum shall be collectively referred to as the *Parties*. Any singular entity may be referred to as a *Party*.
- B. The phased work activities to be performed by CTMRD will extend the site characterization documented in the source referral to the west of Kietzke Lane between Kietzke Lane, Gould Street and north of Mill Street onto Dean Food's property. The phased work activities and objectives include:
  - 1. A passive soil gas (PSG) survey in specific areas on Dean Food's property. The PSG data will extend the existing PSG data coverage and be used to determine the magnitude and extent of PCE near the land surface and refine monitoring well location selection on the property.
  - 2. Installation of active soil gas (ASG) wells to define the concentration, lateral and vertical extent of PCE vapor in the vadose zone on the property.
  - 3. Installation of groundwater monitoring wells to assess groundwater conditions beneath areas determined to be potential sources of PCE as a result of the PSG and ASG surveys and to establish the inter-relationships between PCE in groundwater, soil vapor, and any identified PCE source on the property.
- C. Prior to implementation of the work plan on the property, the NDEP will send official correspondence to Dean Foods notifying them of cost recovery authorities and other potential obligations under State regulations for contamination that may originate or emanate on property they own or operate. The correspondence will include a copy of the finalized work plan, tentative schedule, and proposed costs. Within 14 days from the correspondence's date, Dean Foods shall provide to NDEP their intention to implement the work outlined in the work plan themselves or to conduct an equivalent level of assessment work in a reasonable timeframe.
- D. In the event that Dean Foods declines to implement the work themselves or in the absence of a timely response, the NDEP will seek to obtain access to the property for the CTMRD to implement the work

plan. The NDEP shall designate the CTMRD as an agent of the State for the purposes of access to the property.

- E. The NDEP will entertain all reasonable requests by the property owner regarding accommodations for the property owner and their tenants and/or operator's continued convenience and use of their property during work plan implementation.
- F. The CTMRD will adhere to notification requirements and access restrictions in the access agreement.
- G. When property access is secured, the CTMRD will implement the work elements in the approved work plan. Where possible, any field changes made to approved sampling points or sample collection procedures will be discussed with the NDEP prior to implementation of changed elements.
- H. During planning and implementation of assessment of work on the Dean Food's property, the CTMRD will account for all expended costs and maintain documentation of all contractor invoices and CTMRD staff time. Cost recovery can only be sought for work pertaining to the Dean Food's property as part of the approved work plan. Expenditures on any other assessment performed by the CTMRD should not be included. At the appropriate time, the CTMRD should submit a cost accounting package for the project to the NDEP.

If the investigation work the CTMRD performs identifies an apparent PCE center of mass or probable PCE center of mass (i.e. an apparent PCE release or probable release) location(s) on Dean Food's property as concluded in the Technical Report approved by the NDEP under Paragraph III(L), the NDEP shall take appropriate action to recover costs from Dean Foods, which may include legal action. To the extent such costs are recovered from Dean Foods, the costs will be allocated to the NDEP to reimburse the funds expended to seek cost recovery and to the CTMRD to offset the costs incurred by performing the investigation.

### **III. COMMITMENTS & ACTIONS**

The Parties hereby commit to implement the following actions, and abide by the following conditions:

In the event Dean Food's elects not to implement the work plan, CTMRD will be responsible for performing the following work tasks to complete the investigation.

- Prepare site-specific health and safety plan
- Facilitate utility clearance
- Complete required monitoring well permit forms
- Conduct tenant outreach
- Coordinate on-site activities to limit disruption to tenant's activities as much as is practical
- Coordinate asphalt and concrete cutting
- Perform a PSG survey
- Coordinate soil boring installation and construction of ASG and groundwater wells
  - Install four (4) nested ASG well pairs
  - Install two (2) smear zone/groundwater monitoring well pairs
- Perform ASG and groundwater well sampling

- Manage investigation derived waste
- Prepare a data acquisition technical report summarizing field activities and results and work with NDEP to develop source area maps and rationale for defining PCE contribution on Dean Food's property.

#### A. Health and Safety Plan Preparation

A site-specific Health and Safety Plan (HASP) will be prepared by CTMRD prior to mobilization to minimize potential exposure of field personnel to possible contaminants and occupational hazards, which may be encountered during drilling, well construction, and sampling, as required by the Occupational Safety and Health Administration (OSHA). The HASP will be provided to each subcontractor to facilitate hazard communication during field activities.

#### B. Utility Clearance

Underground utilities will be cleared via Underground Service Alert (USA) by CTMRD, as required by law, and a private utility locator. Sonic boring locations will also be cleared to 6.5 feet bgs and 110% the width of the boring diameter via hand auger, post-hole digger, air knife, or other appropriate precautionary boring clearance method. Borings for installation of 5-foot wells will be cleared to a depth of 5 feet bgs.

#### C. Well Construction Permits

The required monitoring well permit forms will be submitted by CTMRD to the Nevada Division of Water Resources for review and approval. The forms are required for the construction of monitoring wells and include the *Request for a Waiver for Observation or Monitor Well(s)* and the *Affidavit of Intent to Plug a Well*.

#### D. Access Agreement

Prior to the start of work on private property, NDEP will obtain an access agreement with the private property owner. Work on private property will not proceed until the access agreement is in place.

#### E. Tenant Outreach

Tenant outreach will be performed by CTMRD prior to each phase of data acquisition activities. Tenant activities potentially affected by data acquisition and/or drilling activities (e.g. noise, vibration, PSG module or monitoring well placement) will be contacted a minimum of 48 hours prior to the start of data acquisition or drilling activities. The outreach will specify the days and times of planned activities and provide appropriate contact information.

#### F. Concrete and Asphalt Cutting

Prior to drilling, CTMRD will ensure the asphalt or concrete surface at each boring location will be cut and covered with a steel plate.

#### G. PSG Survey

CTMRD will conduct a PSG survey on private property and will include an approximately 250-foot by 450-foot area located on Dean Food's property. The purpose of the PSG survey is to delineate PCE mass in the shallow subsurface in the vicinity of businesses who lease property from Dean Foods. PSG data will be used to refine locations for ASG and groundwater wells the property for further investigation. The survey will be performed by installing approximately 44 or more PSG adsorbent samplers in a grid pattern on roughly 50-foot centers (dependent on building footprints and underground utility locations).

#### H. Soil Boring and Well Installation

CTMRD will ensure soil borings for the purpose of ASG and groundwater well installation will be drilled by advancing a 9.5-inch diameter boring using a sonic drill rig. Boring locations on Dean Food's property will be refined based on the results from the PSG investigation and utility survey.

#### I. Well Sampling and Laboratory Analysis

All wells will be developed and/or sampled based on CTMRD's approved work plan. PSG, ASG, and water samples will be sent to State-certified laboratories where appropriate and as necessary.

#### J. Waste Management

CTMRD will ensure investigation derived waste generated during field activities will be removed daily. Drill cuttings, purge water, well-development water, and decontamination water will be stored within DOT-approved 55-gallon drums pending laboratory analytical results and classification/profiling.

#### K. Phased Reporting

After any individual phase of assessment is completed, including the completion of PSG surveys, ASG sampling, and groundwater monitoring well sampling, the CTMRD will prepare a brief data deliverable that summarizes sampling activities, tabulates data results, and provides analytical data documentation for that sampling effort. The data deliverable will be provided to the NDEP, after which NDEP and CTMRD will discuss the data deliverable as it relates to the need for additional assessment to characterize the PCE impacts, such as placement of groundwater monitoring wells. After NDEP and CTMRD have discussed the data deliverables and decided on next steps for site assessment, NDEP will distribute the data deliverable to Dean Foods with proposed next steps.

#### L. Data Acquisition Technical Report

Upon completion of the investigation activities described herein, a data acquisition technical report (report) will be developed by CTMRD, which will include at a minimum a background section, a description of field activities and methods employed in the field, tabulated PSG survey and ASG data, a discussion of the analytical results, conclusions and recommendations, and limitations. The draft report will be provided to NDEP for review and comment. The NDEP and CTMRD will meet to discuss the findings and reach agreement on apparent releases or probable release locations. After comments are

incorporated or resolved through discussions between the CTMRD and NDEP, the NDEP will provide formal concurrence on the report. To the extent the approved report finds an apparent release or probable release on Dean Food's property, the NDEP will transmit the approved report to Dean Foods and take appropriate action to recover costs, which may include legal action.

#### M. Additional Characterization

Upon completion of the investigation activities described herein and review of the data acquired, the Parties may mutually conclude that additional characterization is warranted to clarify or strengthen the conclusions of the data acquisition technical report. Prior to finalizing the report or as a result of conclusions contained in the finalized report that recommends additional characterization, the NDEP and CTMRD will meet to discuss the scope, timing, and implementation of appropriate additional characterization activities under this Agreement. The Parties may modify this Agreement in accordance with Section XIII to cover additional characterization activities.

#### N. Future Actions

Actions beyond those covered under this Agreement, which include characterization and establishing a basis for cost recovery as a result of characterization, will be determined, as necessary, as a conclusion of the data acquisition technical report. Implementation of any such actions shall be handled under separate agreement. These actions may include, but are not be limited to, the evaluation, design, implementation, and operation of a remedy for soil and groundwater for the purposes of reducing or eliminating PCE in the Kietzke High Mass Area. The Division will use the resources available to it, including its legal authorities under NRS 445A, 459, and 540A, to seek terms of an agreement with all appropriate parties that are consistent with the outcome of characterization and basis for cost recovery determination contained herein.

### IV. FUNDING

The Parties acknowledge that, except as provided in Section V. Cost Recovery, this agreement imposes no financial obligation between NDEP and the CTMRD.

### V. COST RECOVERY

Costs directly related to assessment of PCE concentrations in soil gas and groundwater conducted by the CTMRD may be eligible for cost recovery by NDEP under NRS 540A.280 and other state environmental laws.

NDEP has exclusive right and authority to determine whether to pursue or conclude a cost recovery action against Dean Foods for all expenditures made in investigating PCE contamination in and around APNs 012-171-16, 012-171-15, 012-171-13, 012-171-12, 012-171-02, and 012-171-14.

If the investigation work identifies an apparent PCE center of mass or probable PCE center of mass (i.e. an apparent PCE release or probable release) location(s) on Dean Food's property as concluded in the Technical Report approved by the NDEP under Paragraph III(L), the NDEP shall take appropriate action to recover costs, which may include legal action. A target recovery percentage for costs per individual parcel has been

mutually agreed between NDEP and CTMRD. The target recovery percentage is based on the number of years that site use involving potentially contributory activities for PCE occurred at the parcel prior to ownership by Dean Foods and during ownership by Dean Foods.

The target recovery percentages for parcels are listed below. If an apparent or probable PCE center of mass (i.e. an apparent or probable release) is located on a parcel, the NDEP will seek to achieve cost recovery for the entire investigation at least equal to the target recovery percentage for that parcel. If the apparent or probable PCE center of mass (i.e. an apparent or probable release) is divided between multiple parcels or if multiple centers of mass are located on separate parcels, the NDEP will seek to achieve cost recovery for the entire investigation at least equal to an equitable distribution of target recovery percentages for the multiple parcels.

<b>Target Cost Recovery Percentages per Assessor Parcel Number</b>		
<b>APN</b>	<b>Additional APNs Associated with Main APN</b>	<b>Target Recovery from Dean Foods</b>
012-171-16	012-171-02 (storage and parking)	60%
012-171-15	012-171-14 (storage, parking, vehicle access)	0%
012-171-13	N/A	50%
012-171-12	N/A	25%

If cost recovery from Dean Foods will not meet target recovery percentages for any reason, the NDEP and CTMRD will set a period and schedule for discussions, not to exceed 60 days, between the agencies to evaluate any existing proposals or other legal options prior to the NDEP concluding or resolving cost recovery efforts. The NDEP and CTMRD agree to consider all legal, regulatory, and fiscal resources and approaches to achieve target recovery percentages in a mutually agreeable fashion.

## **VI. DISPUTE RESOLUTION**

- A. The Parties agree to use reasonable efforts to address and resolve any issues or dispute between them.
- B. If the NDEP and CTMRD cannot reach concurrence on the approval of the Technical Report under Paragraph III(L) or the outcome of Cost Recovery under Section V, the NDEP will identify the appropriate staff and legal counsel to seek resolution and establish a schedule not to exceed 30 days for discussions. If resolution cannot be achieved, the dispute may be elevated to the NDEP Administrator and Director of the Community Services Department of Washoe County with a schedule for resolution not to exceed 30 days. The NDEP Administrator is the final decision-making authority for any dispute that is elevated to that level.

## **VII. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of the Agreement, and to that end the provisions of this Agreement are declared to be severable.



## **VIII. RESERVATION OF RIGHTS**

- A. Except with respect to authority lawfully delegated to CTRMD herein, nothing in this Agreement is intended to restrict the authority of any Party to act as provided by law, statute, or regulation.
- B. This Agreement is not intended to, and does not create any right, benefit or trust responsibility by any party against the Parties to this Agreement, their respective agencies, officers, or any person.
- C. This Agreement is an internal agreement between the Parties and does not confer any right or benefit on any third person or party, private, or public.

## **IX. LIMITATIONS**

Nothing in this Agreement shall be construed to require actions by the Parties which are inconsistent with local, State, or Federal laws and regulations or any court order.

## **X. EXECUTION IN COUNTERPARTS**

The Parties may execute this Agreement in counterparts, each of which is deemed an original and all of which constitute only one agreement.

## **XI. ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of the Agreement shall be deemed to exist or to bind the Parties hereto.

## **XII. TERM & UPDATE**

This Agreement shall become effective on the date upon which it is executed by the NDEP as the last Party executing this Agreement, after it having previously been signed by CTRMD. This Agreement shall expire on April 20, 2021, unless sooner terminated by either party as set forth in this Agreement.

## **XIII. MODIFICATION, SUSPENSION OR TERMINATION**

At any point during this term, this Agreement may be modified with the consent in writing of all signatory Parties. Modifications to this Agreement will not result in a change to or extension of the initial term (Section XII) of this Agreement unless specifically agreed by the Parties.

This Agreement will be effective until modified with the consent of all Parties, or until expiration (See Section XII. Term & Update) unless terminated earlier by any party. This Agreement may be terminated by either party prior to the date set forth in paragraph (XII), provided that termination shall not be effective until 30 days after a party has served written notice on the other party. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party without cause.

The Parties expressly agree that this Agreement shall be terminated immediately if for any reason State and/or federal and/or County funding ability to satisfy this Agreement is withdrawn, limited, or impaired, without penalty, charge, or sanction to the Parties.

**XIV. INDEMNIFICATION/LIMITATION OF LIABILITY**

To the fullest extent permitted by law, CTMRD shall indemnify, hold harmless and defend, not excluding NDEP’s right to participate, NDEP from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorney’s fees and costs, arising out of any breach of the obligations of CTMRD under this Agreement, or any alleged negligent or willful acts or omissions of CTMRD, its officers, employees and agents. CTMRD’s obligation to indemnify the NDEP shall apply in all cases except for claims arising solely from the NDEP’s own negligence or willful misconduct. CTMRD waives any rights of subrogation against the NDEP. CTMRD’s duty to defend begins when the NDEP requests defense of any claim arising from this Agreement.

The parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases.

**XV. SIGNATORIES**

Each undersigned representative to this Agreement certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.

**For the Nevada Division of Environmental Protection:**

_____	_____	_____	_____
Greg Lovato	Date	Katie Armstrong	Date
Administrator		Deputy Attorney General	
		<i>Approved as to Form Only</i>	

**For the County of Washoe:**

_____	_____
Bob Lucey, Chair	Date
Washoe County Commission	