



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MEMORANDUM

DATE: 26 April 2023

SUBJECT: Request for Approval of a Time-Critical Removal Action for the Navajo Tribal Sawmill Enterprise Site, Sawmill, Navajo County, Arizona, Sawmill Chapter, Navajo Nation Indian Reservation

FROM: Jeremy Johnstone, On-Scene Coordinator
Emergency Response Section I (SFD-9-1)

THROUGH: Lynn Keller, Section Chief (SFD-9-1)

Pete Guria, Assistant Director (SFD-9)

TO: Michael Montgomery
Director
Superfund and Emergency Management Division

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval to spend up to \$1,170,000 in direct extramural costs to mitigate threats to human health and the environment posed by the presence of asbestos, which is a hazardous substance, at the Navajo Tribal Sawmill Enterprise Site (the Site), located in Sawmill, Arizona on the Navajo Reservation.

The proposed time-critical removal action would mitigate threats to human health and the environment posed by exposed, asbestos debris piles. If not addressed, Site conditions may result in an imminent and substantial endangerment to public health or welfare through the continued public exposure to harmful concentrations of asbestos fibers.

The proposed response action at the Site would be undertaken pursuant to and is consistent with Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(a)(1), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR § 300.415. Conditions at the Site meet the criteria for a removal action, and if not addressed by implementing the immediate response action documented in this memorandum, may lead to additional human exposure to asbestos.

II. SITE CONDITIONS AND BACKGROUND

Site Name: Navajo Tribal Sawmill Enterprise Site
CERCLIS ID: NNN000905872
SSID: A9DY
Site Location (Lat/Long): 35.902222, -109.163889
Removal Category: Time-Critical
Site Status: Non-NPL

A. Site Description

1. Physical Location

The Site is located in Sawmill, Arizona on the Navajo Reservation (North latitude 35.902222, West longitude -109.163889). The Site, a former lumber mill, encompasses approximately seven acres located in the town of Sawmill, Route 72, Sawmill Chapter, Navajo Nation and is located within Navajo County, Arizona. See Attachment 2 (Figures, Tables & Photos) for a Site Location Map.

2. Site Characteristics

The Site is owned by the Navajo Nation and is zoned as Tribal Lands. The sawmill after which the Site, town, and chapter were named, was constructed in 1939 and decommissioned in 1963.

The Site is generally vacant and vegetated with grasses and mature trees. The primary concern with the Site is the dilapidated, partially collapsed concrete kiln building which was used to dry the processed lumber at the facility. Significant amounts of asbestos containing material (ACM) have been detected in deteriorating condition on both internal and external portions of the building and on top of nearby soils.

Offsite there are residences, the Sawmill Chapter House, and a gas station with market and laundry facilities, all located within close proximity (one tenth to less than one quarter mile) of the kiln building.

Due to the condition and construction of the kiln building, ACM on the ground and in soils nearby the building, and the proximity to potential receptors, Navajo Nation EPA (NNEPA) representatives have requested that U.S. EPA evaluate the Site for consideration for a time critical removal action.

3. Removal Site Evaluation

In October 2021, an EPA OSC, accompanied by a member of NNEPA, visited the site and confirmed the presence of ACM.

In July 2022, EPA with support from its Superfund Technical Assessment & Response Team (START) contractors and in partnership with NNEPA, collected 13 bulk

samples of suspected ACM from the kiln structure, a concrete trough adjacent to the kiln, the remnant of the site's former power plant, and from the ground both around the outside of the kiln building and scattered elsewhere on the ground for laboratory analysis. Nine of the thirteen samples demonstrated the presence of ACM, the highest concentration being 80% chrysotile (EMC Labs Inc., Laboratory Report 0276130, Bulk Asbestos Analysis by Polarized Light Microscopy, Asbestos Analysis of Bulk Materials, 22 July 2022). See Attachment 2 for a tabulated summary of positive asbestos sampling results as well as figures depicting the associated sampling locations.

In November 2022 EPA, Emergency and Rapid Response Services (ERRS) and START personnel participated in a pre-planning site visit with NNEPA staff. This Site walk allowed for ERRS to perform a visual asbestos assessment and develop a potential sequence of asbestos removal operations for the kiln building located at the Site.

EPA believes that the above-described assessment results, and the proximity of the kiln building and ACM on surface soils to nearby facilities and residences, provide sufficient information to identify threats to human health and the environment and warrant a time critical removal action at the Site.

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

Asbestos, is a hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601.

According to the Agency for Toxic Substance and Disease Registry (ATSDR), asbestos exposure can cause serious lung problems and cancer. As discussed in Section A.3. above, EPA Region 9 has documented the presence of friable asbestos in surface soils through sampling and laboratory analysis and has observed ACM in close proximity to nearby residences located next to the Site in Sawmill, Arizona. Due to the dry desert and seasonal frequent high wind conditions in this area, there is a threat of exposure to the nearby community that needs to be mitigated by a time-critical removal action.

5. NPL status

The Site is not on the National Priorities List (NPL), nor is it proposed to be on the NPL.

B. Other Actions to Date

EPA Region 9 previously conducted a Preliminary Assessment (PA) of the Site under Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9404, to determine whether the Site may qualify for placement on the NPL. In 2009, based on then-current available information contained in the PA report produced that year, the Region determined that no further assessment or action was warranted at the Site.

C. State and Local Authorities' Roles

1. State and local actions to date

No state or tribal actions are known to have taken place at the Site to address the presence of ACM. Discussions with NNEPA indicate that they do not have the resources to properly mitigate the hazards associated with ACM at the Site. EPA has consulted with NNEPA and will continue to involve NNEPA in the planning and execution of this removal action in accordance with the EPA Policy on consultation and coordination with Indian Tribes. These discussions constitute tribal consultation.¹ The Site is not in the jurisdiction of the Arizona Department of Environmental Quality.

2. Potential for continued response

There are no current plans for a Tribal response at the Site. On March 23, 2023, the NNEPA sent a letter to EPA describing the threats posed by the abandoned waste at the Site and requested EPA's assistance in their removal. Staff members of the NNEPA have provided EPA with the documentation needed to support the removal action and have agreed to assist with any consultations that may be required.

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

Current Site conditions include ongoing releases (and the threat of future releases) of hazardous substances, namely: asbestos fibers. The likelihood of direct human exposure, via inhalation of hazardous substances, and the threat of future releases and migration of those substances, pose a threat to public health or welfare of the United States or the environment based on the factors set forth in the NCP, 40 CFR § 300.415(b)(2). These factors include:

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants. 40 CFR § 300.415(b)(2)(i).

The Site includes a large concrete structure that is constructed with ACM and is dilapidated and partially collapsed. The long-standing lack of repair or maintenance has allowed ACM to migrate to the outside of the structure impacting surrounding surface soils, thus threatening the nearby community.

High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate. 40 CFR § 300.415(b)(2)(iv).

¹ See <http://www.epa.gov/tp/pdf/cons-and-coord-with-indian-tribes-policy.pdf>

Analytical results reveal the presence of asbestos in surface soils at the Site, in proximity to nearby residential properties, a commercial enterprise and the local chapter house.

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. 40 CFR § 300.415(b)(2)(v).

Dry, windy conditions could cause asbestos fibers located at or near the soil surface to become airborne and pose a health hazard to nearby residential and public populations.

The availability of other appropriate federal and state response mechanisms to respond to the release. 40 CFR § 300.415(b)(2)(vii).

The NNEPA has indicated that it lacks the resources to perform the removal actions necessary at the Site in a timely manner.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of ACM, a hazardous substance, from the Site, if not addressed by implementing a time-critical removal action, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

U.S. EPA proposes to mitigate the release or threat of release of hazardous substances that is causing a threat to public health or welfare or the environment by taking steps to prevent the release of asbestos fibers. The removal action will include the following objectives to prevent human exposure to asbestos fibers at the Site:

- Remove all or portions of the former concrete kiln building;
- Remove asbestos-contaminated soil or material from the area surrounding the former concrete kiln building and other demolished buildings on Site;
- Utilize dust suppression/wetting techniques to prevent a release;
- Conduct air and soil sampling to demonstrate that the hazards have been mitigated and to document that dust suppression techniques are effective;
- Transport and dispose of removed/excavated material at an appropriate facility in compliance with the off-site rule, 40 CFR § 300.440; and
- Conduct confirmation sampling and analysis.

This removal action would address the asbestos contamination associated with the kiln building and that visible on surface soils in the immediate vicinity.

2. Contribution to remedial performance

As noted above, the Site is currently not on, nor proposed for, the NPL, and EPA does not anticipate performing future remedial work at the Site. In any event, the proposed action will not impede potential future responses based upon available information.

3. Applicable or relevant and appropriate requirements (ARARs)

Section 300.415(j) of the NCP provides that removal actions must attain ARARs to the extent practicable considering the exigencies of the situation.

Section 300.5 of the NCP defines applicable requirements as cleanup standards, standards of control, and other substantive environmental protection requirements, criteria or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location or other circumstances at a CERCLA site.

Section 300.5 of the NCP defines relevant and appropriate requirements as cleanup standards, standards of control and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not “applicable” to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstances at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site and are well-suited to the particular site.

Pursuant to CERCLA section 121(e), CERCLA on-site response actions do not require permitting; only substantive requirements are considered as possible ARARs. Administrative requirements such as approval of, or consultation with administrative bodies, issuance of permits, documentation, reporting, record-keeping and enforcement are not ARARs for the CERCLA actions confined to the site.

Federal ARARs determined to be practicable for the Site are:

- U.S. Department of Transportation of Hazardous Materials Regulations, 49 CFR Part 171, 172 and 173.
- Resource Conservation and Recovery Act, 42 USC § 6901 *et seq.* and its implementing regulations, 40 CFR §§ 260-270.
- Clean Air Act, 42 USC § 7401 *et seq.* and its implementing regulations, 40 CFR Part 61 Subpart M.
- Native American Graves Protection and Repatriation Act, 25 USC Section 3001 *et seq.* and its implementing regulations, 43 CFR Part 10.
- National Historic Preservation Act, 16 USC Section 470 *et seq.* and its implementing regulations, 36 CFR Part 800.
- Archeological Resources Protection Act of 1979, 16 USC Section 47000 *et seq.* and its implementing regulations, 43 CFR Part 7.
- American Indian Religious Freedom Act, 42 USC Section 1996 *et seq.*

In consultation with the Navajo Nation, Tribal ARARs determined to be practicable for the Site are:

- Navajo Nation Environmental Protection Act, Title 4 of the Navajo Nation Code
- Navajo Nation Fundamental Law (1 Navajo Nation Code §§201-206)
- Navajo Nation CERCLA (4 Navajo Nation Code §§2101 et seq.)
- Navajo Nation Endangered Species List – Resource Committee Resolution (RCAU-103-05)
- Navajo Nation Clean Water Act and Navajo Nation Surface Water Quality Standards – Title 4 Navajo Nation Code
- Navajo Nation Solid Waste Act – Subchapter 2 – Prohibited Acts and Navajo Nation Solid Waste Regulations – Part 9 – Collection and Transportation of Solid Waste
- Navajo Nation Pollutant Discharge Elimination System Program

4. Project schedule

EPA estimates that it will take approximately six weeks to complete the removal, including demolition, asbestos abatement, excavation, transport, disposal, and confirmation sampling.

B. Estimated Extramural Costs

Regional Removal Allowance Costs

ERRS Contractor Costs	\$700,000
START Contractor Costs	\$275,000
Extramural Contingency (20% of Subtotal)	\$195,000
Total Removal Action Project Ceiling	\$1,170,000

*The EPA direct and indirect costs, although cost recoverable, do not count toward the Removal Ceiling for this removal action. Liable parties may be held financially responsible for costs incurred by the EPA as set forth in Section 107 of CERCLA.

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

Given the Site conditions, the nature of the hazardous substances documented on-site, and the potential exposure pathways to nearby populations described in Sections III and IV above, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response actions selected in this Action Memorandum, may continue to present a threat to public health or welfare or the environment.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

Please see the attached Confidential Enforcement Addendum for a discussion regarding potentially responsible parties (PRPs). The following intramural costs are also recoverable:

Estimated EPA costs for this Removal Action

U.S. EPA Direct Costs ²	\$35,000
U.S. EPA Indirect Costs (68.46% of Spending: \$1,170,000 + \$35,000)	\$824,943
TOTAL	\$859,943

The total U.S. EPA extramural and intramural costs for this removal action, based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$2,029,943.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Navajo Tribal Sawmill Enterprise Site, which was developed in accordance with CERCLA and which is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Because conditions at the Site meet the NCP Section 300.415(b) criteria for a removal, EPA staff recommends the approval of the removal action proposed in this Action Memorandum. The total project ceiling if approved will be \$2,029,943 of which up to an estimated \$1,170,000 comes from the Regional Removal Allowance. Approval may be indicated by signing below.

Approve:

Michael Montgomery
Director
Superfund and Emergency Management Division

Date

² Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

Disapprove:

Michael Montgomery
Director
Superfund and Emergency Management Division

Date

Attachments:

1. Index to the Administrative Record
2. Location Map, Figures, Table
3. Enforcement Confidential Addendum

cc (via email):

W. Duncan, SFD-6
L. Schilling, ORC-3-2

bcc:

C. Whitenack, SFD-7-5

M. Matthews, SFD-9-3

B. Lee, SFD-9-3

C. Temple, SFD-9-3

K. Castro, SFD-2

M. Montgomery, SFD-1

P. Guria, SFD-9

L. Keller, SFD-9-1

J. Musante, SFD-9-2

ATTACHMENT 1
INDEX TO THE ADMINISTRATIVE RECORD

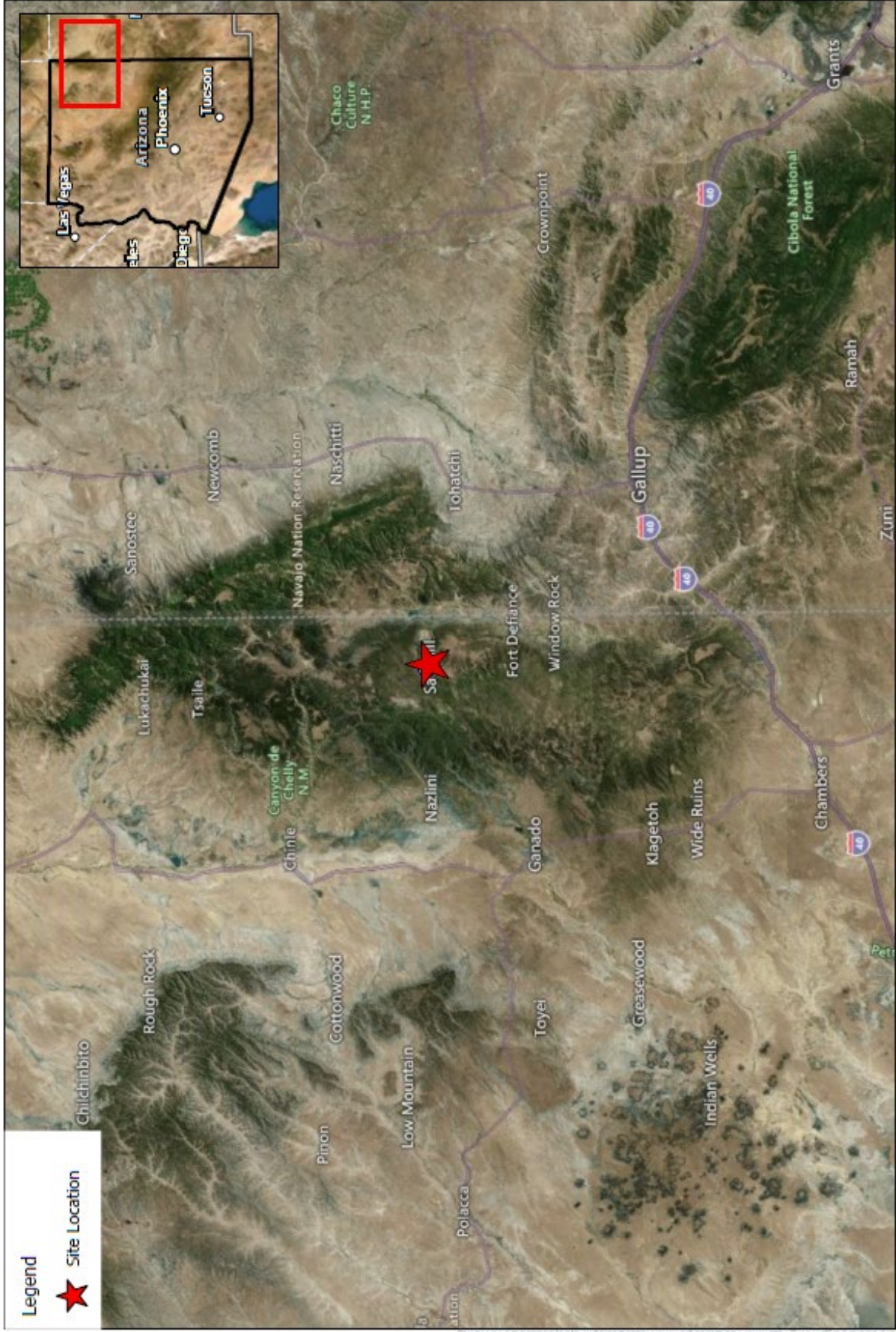
1. Framework for Investigating Asbestos-Contaminated Comprehensive Environmental Response, Compensation, and Liability Act Sites, U.S. EPA, 2021.
2. Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs, Asbestos, CAS#1332-21-4, September 2001.
3. Sawmill, AZ Asbestos Removal Assessment Report, Weston Solutions Inc. (START), September 2022
4. Tribal request letter, March 23, 2023

Navajo Tribal Sawmill Enterprise Site
Action Memorandum

Attachment 2
Location Map, Figures, Table

Navajo Tribal Sawmill Enterprise Site
Action Memorandum

Attachment 2.a
Location Map



<p>FIGURE 1 Site Location Sawmill, Arizona Asbestos Removal Assessment Sawmill Chapter, Navajo Nation Sawmill, Apache County, AZ</p>	<p>Prepared For EPA Region 9 Pacific Southwest</p> <p>Prepared By Weston Solutions, Inc. Long Beach, CA 90805 August 2022</p>	<p>Contract: 68HE0818D00002</p> <p>Task Order: 68HE0818F0081-20</p> <p>DCN: 0145-08-AA.XL</p>	<p></p> <p></p> <p>0 30 Miles</p>
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Navajo Tribal Sawmill Enterprise Site
Action Memorandum

Attachment 2.b
Figures

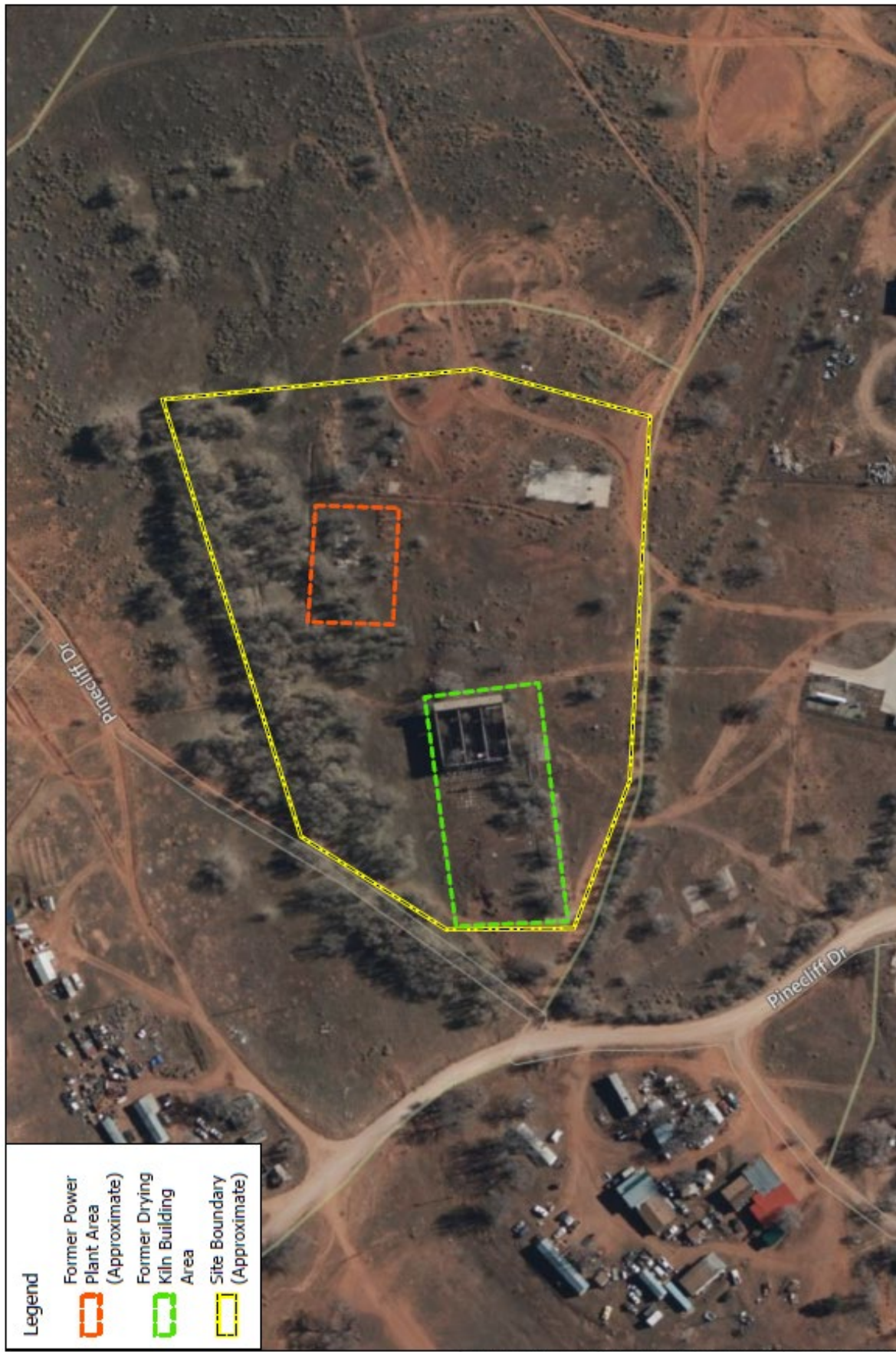


FIGURE 2
Site Layout

Sawmill, Arizona Asbestos Removal Assessment
Sawmill Chapter, Navajo Nation
Sawmill, Apache County, AZ

Prepared For
EPA Region 9
Pacific Southwest

Prepared By
Western Solutions, Inc.
Long Beach, CA 90805
August 2022

Contract:
68HE0919D0002

Task Order:
68HE0919F0081-20

DCN:
0145-08-AAXL

0 360
Feet

Legend

- Former Power Plant Area (Approximate)
- Former Drying Kiln Building Area
- Site Boundary (Approximate)
- Negative Bulk Asbestos Sample Detection
- Positive Bulk Asbestos Sample Detection





Prepared For
 EPA Region 9
 Pacific Southwest

Prepared By
 Weston Solutions, Inc.
 Long Beach, CA 90805
 August 2022

Contract:
 68HE0019D0002

Task Order:
 68HE0019F0081-20

DCN:
 0145-08-AAXL

FIGURE 3
Bulk Asbestos Sample Locations
 Sawmill, Arizona Asbestos
 Removal Assessment
 Sawmill Chapter, Navajo Nation
 Sawmill, Apache County, AZ

Navajo Tribal Sawmill Enterprise Site
Action Memorandum

Attachment 2.c

Table

Positive Detections of Asbestos in Building Materials and on Surface Soils

Table 1
Bulk Sample Results – July 2022

<u>Sample Number</u>	<u>Bulk Sample Description</u>	<u>Asbestos (% / Type)</u>
SAZ-BS-001	Membrane, Black	5% Chrysotile
SAZ-BS-002	Membrane, Black	5% Chrysotile
SAZ-BS-003	Membrane, Black	5% Chrysotile
SAZ-BS-004 (Layer 1)	Transite, Off White	15% Chrysotile
SAZ-BS-004 (Layer 2)	Corrugated Roofing, Gray	8% Chrysotile
SAZ-BS-005	Asphaltic Roofing, Black	Not Detected
SAZ-BS-006	Asphaltic Roofing, Black / Gray	Not Detected
SAZ-BS-007	Concrete, Off White w/ Black	Not Detected
SAZ-BS-008	Patch, Black	5% Chrysotile
SAZ-BS-009	Patch, Black / Gray	10% Chrysotile
SAZ-BS-010	Concrete under Corrugated Roof, Off White	3% Chrysotile
SAZ-BS-011	Fiberboard / Aircell, Black/ Gray	80% Chrysotile
SAZ-BS-012	Mortar, Beige/Gray	Not Detected

Note: * Samples were analyzed by PLM by EPA Method 600/R-93/116 by EMC Labs Inc.