

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 SEP 11 PM 6:10
RCRA-08-2007-0003 *ama*

IN THE MATTER OF:)

The Oglala Sioux Tribe)
Pine Ridge Baling Facility)
Pine Ridge, SD 57770)

Respondent.)

Docket No. ~~SDWA-08-2007-0083~~

ADMINISTRATIVE ORDER

Proceeding Under § 7003 of the
Solid Waste Disposal Act,
as amended, 42 U.S.C. § 6973

I. JURISDICTION

1. This Administrative Order (Order) is issued by the United States Environmental Protection Agency Region 8 (EPA) pursuant to section 7003(a) of the Solid Waste Disposal Act, as amended by and hereafter referred to as the Resource Conservation and Recovery Act and subsequent amendments ("RCRA" or "the Act"), 42 U.S.C. § 6973(a).

2. EPA maintains sole jurisdiction to implement and regulate the RCRA program within the exterior boundaries of the Pine Ridge Indian Reservation (Reservation).

3. EPA has determined that the storage, transfer, or disposal of solid waste at the Pine Ridge baling facility (baling facility) located in Shannon County, South Dakota, may present an imminent and substantial endangerment to human health or the environment. The current emergency conditions were identified in a report received by EPA on September 7, 2007, of a fire at the baling facility that began on Wednesday, September 5, 2007. The fire started in an area of the facility known as the former Pine Ridge open dump or landfill, located to the north of the baling building.

4. EPA hereby takes this action pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, having determined that the issuance of this Order is necessary to protect health or the environment.

5. Prior to issuing this Order, EPA consulted with the Oglala Sioux Tribe (OST) to confirm the information on which this Order is based and to ascertain the actions which the OST is taking in accordance with RCRA § 7003(c), 42 U.S.C. §6973(c).

II. PARTIES BOUND

6. The OST of the Pine Ridge Indian Reservation, a self-governing, federally-recognized tribal government, owns and operates the baling facility.

7. This Order shall apply to and be binding upon the OST, its programs and departments, officers, directors, managers, employees, successors and assigns.

8. No change in administration, ownership, or employment status relating to the baling facility or OST's Solid Waste Program will in any way alter the status or responsibility of the OST under this Order. Any conveyance by the OST of title, easement, or other interest in the baling facility described herein, or a portion of such interest, shall not affect the OST's obligations under this Order.

9. The OST shall provide a copy of this Order to all program managers, contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within five (5) calendar days of the date of OST's receipt of this Order or date of such retention and shall condition all such contracts on compliance with terms of this Order.

III. FACILITY DESCRIPTION

10. The baling facility is located on approximately 41.87 acres of tribal trust land in Shannon County, South Dakota, within the exterior boundaries of the Pine Ridge Indian Reservation.

11. For purposes of this Order, the term "baling facility" shall include the baling building and surrounding area, and the active open dump to the north of the baling building generally referred to as the former Pine Ridge open dump.

12. The baling facility is a processing rather than a disposal facility.

13. Operational since April 2002, the baling facility receives commercial waste from Pine Ridge Village and solid waste collected from ten transfer stations located throughout the Reservation. The solid waste is compacted into bales at the baling building and transported to the Red Shirt landfill, located in the far northwest corner of the Reservation near the community of Red Shirt, for disposal. A fenced-off area adjacent to the baling building provides day-storage for baled waste awaiting transport to the Red Shirt landfill. The baling building portion of the baling facility is surrounded by a high-security fence and locked gate.

14. The portion of the baling facility currently being used as an active open dump was closed to additional waste in October 2004, after interim cover was applied, a barbed-wire fence constructed, and signs posted prohibiting open dumping. A final closure plan was in the process of being formulated in accordance with 40 C.F.R. Part 258. Some time after 2004, the open dump resumed accepting solid waste. More recently, the OST Solid Waste Program designated separation areas for stockpiling tires, recyclables, white goods, and construction and demolition debris. The gate to the open dump currently is not restricted or monitored.

IV. FINDINGS OF FACTS

Ownership and Operation:

15. OST provides solid waste management services for the collection and disposal of solid waste on the Reservation.

16. The OST owns and/or operates the baling facility.

17. During an EPA site visit of the baling facility conducted on June 27, 2005, hundreds of bales existed outside the baler building and surrounding area, many of which lay open with garbage strewn about. At that time, renewed dumping at the open dump was observed.

18. At present, an unknown number of bales are stored at the baling facility. Accumulated bales are stacked inside and adjacent to the baling building awaiting transfer to and final disposal in the Red Shirt landfill. Excess bales also are present at the open dump. Trucks

under the authority of the OST have at times bypassed the baling building and have disposed of solid waste at the open dump.

19. The general public also disposes of solid waste at the baling facility's open dump.

20. The baling facility is located approximately one-half mile south of Pine Ridge Village, the main community and commercial center for the Pine Ridge Indian Reservation. The tribal administration complex, residences, schools, a hospital, and other community facilities are located in Pine Ridge Village.

21. Additional residences are located on the southern edge of the baling facility. The home nearest to the open dump is approximately 500 feet from the fence.

22. Community drinking water wells, consisting of 10 groundwater wells, are located approximately three-quarters of a mile from the baling facility. Although many of the residences surrounding the baling facility recently were connected to a community water system, these homes have private drinking water wells which may currently be in use.

Potential Threat to Health and Environment:

23. On Wednesday, September 5, 2007, a suspected arson fire began at the baling facility in the vicinity of the open dump. The fire consisted primarily of undifferentiated household waste and surrounding grasslands.

24. The OST Environmental Department and BIA Fire Management Office responded to the fire and attempted to extinguish it by applying and mixing into the debris dirt cover using a front-end loader and bulldozer. Fire retardant was dumped during fly-overs on Thursday, September 6, 2007, to help extinguish the fire. As of 1:00 pm MDT on September 7, 2007, the fire was expected to be buried by the end of the day.

25. On Thursday, September 6, 2007, and again on Friday, September 7, 2007, the BIA Pine Ridge Agency offices were closed due to heavy smoke from the fire. BIA recommended that the OST governmental offices and schools within the Pine Ridge School District also be closed due to the smoke.

26. As of Friday, September 7, 2007, plumes of smoke continued to impact the Pine Ridge Village to the North and the housing developments to the south. Residents living in Pine Ridge Village were inundated by smoke on September 6 and 7, 2007.

27. Smoke impacted two BIA detention facilities at and near Pine Ridge Village.

28. The OST Environmental Department received complaints from nearby residents regarding the smoke and related breathing difficulties.

29. On September 7, 2007, the OST Environmental Program issued an Air Pollution Alert for smoke, recommending that people avoid exposure to the outside air.

30. No air monitoring of the smoky conditions was conducted.

31. According to the BIA Pine Ridge Agency Superintendent on Monday, September 10, 2007, there was still some smoldering observed at the fire scene but the air quality had improved.

Effects on Human Health or the Environment:

32. Emissions from uncontrolled burning of solid waste at the baling facility may contain particulates and pollutants that pose human health hazards. The incomplete combustion and lack of emission controls on open burning at and around the baling facility would produce similar emissions, potentially including the contaminants identified below.

Particle Pollution: Particle pollution, also referred to as particulate matter, or PM, refers to microscopic particles released by open burning. Particles that are small enough to get into the lungs (those less than or equal to 10 um in diameter) can cause numerous health problems. Particles can aggravate respiratory conditions such as asthma and bronchitis, and have been associated with cardiac arrhythmia (heartbeat irregularities) and heart attacks. People with heart or lung disease, the elderly, and children are at highest risk from exposure to particles.

Polycyclic Aromatic Hydrocarbons: Polycyclic aromatic hydrocarbons, or PAHs, are a group of chemicals commonly found in particulate matter (or smoke and soot) released from open burning. They are formed from the incomplete combustion of certain materials. Some PAHs are carcinogenic or cancer-causing.

Volatile Organic Compounds: People in the immediate vicinity of a burn site are also exposed to high levels of volatile organic compounds (VOCs) produced by open burning. Many VOCs are harmful to humans. They also contribute to ground-level ozone pollution, also known as smog which can worsen respiratory, heart, and other existing health problems. Inhaling certain VOCs can lead to eye, nose, and throat irritation; headache; loss of coordination; nausea; and damage to liver, kidney, and central nervous system.

Carbon Monoxide: Another major pollutant generated by open burning is carbon monoxide (CO). At low levels of exposure to CO, humans may experience a variety of neurological symptoms including headache, fatigue, nausea, and vomiting.

Hexachlorobenzene: Hexachlorobenzene, or HCB, is a highly persistent environmental toxin that degrades slowly in air and, consequently, undergoes long-range atmospheric transport. HCB bioaccumulates in fish, birds, lichens, and animals that feed on fish or lichens. Based on studies conducted on animals, long-term low-level exposures may damage a developing fetus, cause cancer, lead to kidney and liver damage, and cause fatigue and skin irritation. HCB is considered a probable human carcinogen and is toxic by all routes of exposure.

Ash: Open burning also produces ash residue, which can contain toxic metals such as mercury, lead, chromium, and arsenic. These metals can be toxic when ingested. When a person ingests hazardous amounts of lead, for example, he or she may experience high blood pressure, cardiovascular problems, kidney damage, and brain damage. Children playing at a site can incidentally ingest soil containing these metals. Also, rain can wash the ash into groundwater and surface water, contaminating drinking water and food.

33. Explosions, smoke and toxic emissions associated with the fire pose separate and significant threats to human health. The potential emissions from burning hazardous materials are also a concern because of the lack of controls on dumping at the baling facility. Small quantity household waste items likely are to be disposed of at the baling facility.

34. Uncovered waste encourages disease carriers and causes odors, blowing litter and scavenging which can affect the health of nearby residents.

35. Inadequate fencing surrounding and unrestricted gate access to the baling facility to prevent public contact with the municipal solid waste pose a significant threat to humans, especially children who may play in and around the former open dump.

36. Open dumping poses a significant threat to the environment, possibly contaminating ground water, nearby surface water sources, air and land.

37. Because the baling facility is unlined and otherwise noncompliant with 40 C.F.R. part 258, no barrier exists to prevent runoff (which may include liquids from garbage, household hazardous wastes and oil) from seeping into underlying ground water sources.

V. CONCLUSIONS OF LAW

38. Pursuant to section 1004(13) of the Act, 42 U.S.C. § 6903(13), "municipality" means, in part, an Indian tribe or authorized tribal organization or Alaska Native village or organization.

39. For purposes of this Order, OST is a "municipality" within the meaning of section 1004(13) of the Act, 42 U.S.C. § 6903(13).

40. For purposes of this Order, OST is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).

41. OST has handled "solid waste" at the baling facility within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27).

42. OST has handled, stored, treated, transported or disposed of solid waste at the baling facility within the meaning of section 7003 of the Act, 42 U.S.C. § 6973.

43. OST's handling, storage, treatment, transportation or disposal of solid waste at the baling facility may present an imminent and substantial endangerment to health or the environment within the meaning of SDWA § 7003, 42 U.S.C. § 6973.

VI. ORDER

44. Based on the above and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect health or the environment. EPA, therefore, hereby orders OST to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

VII. WORK TO BE PERFORMED

45. Upon receipt of this Order, continue to monitor the baling facility for additional burning. In the event of a fire recurrence, take immediate action(s) necessary to contain and extinguish the fire using measures appropriate for combating a landfill fire.

46. In the event of a fire recurrence resulting in visible plumes of smoke, immediately publish and/or broadcast an Air Pollution Alert notifying the public of poor air quality conditions due to the fire and recommending limited exposure to the outside air.

47. In the event of a fire recurrence resulting in visible plumes of smoke, immediately notify the National Response Center at (800) 424-8802 in accordance with the notification procedures National Contingency Plan, including reporting the existence of smoke plumes which may pose a threat to human health.

48. Within thirty (30) days of receipt of this Order, OST shall submit for EPA review and approval a cleanup plan and schedule for the baling facility. The cleanup plan and schedule shall include the removal and proper disposal of all bales currently stockpiled inside and adjacent to the baling building. The cleanup plan and schedule shall also address the open dump site, to include removing and properly disposing of subsequent accumulations of solid waste,

permanently discontinuing open dumping of solid waste, installing a high-security fence and controlled-access gate, and applying interim cover. By these measures, the open dump shall be returned to site conditions as they existed in October 2004 for purposes of fire prevention and to abate the potential threat to human health currently posed. Following and separate from this Order, OST will need to develop and implement a final closure plan under 40 C.F.R. Part 258 for the open dump.

49. OST shall implement the cleanup plan and schedule following EPA approval. Upon EPA approval, the cleanup plan and schedule shall be incorporated into this Order.

50. OST shall submit with the schedule current estimates for the volume of waste to be removed, the cost to remove and dispose of the waste, and the cost to secure the open dump.

51. Within twenty (20) days of removing the solid waste referenced in paragraph 48. above, OST shall obtain and submit to EPA along with copies of any related disposal receipts a letter from the Manager of the OST Solid Waste Program certifying that cleanup of the baling facility, including the open dump, has been satisfactorily completed in accordance with this Order.

VIII. ACCESS AND PERMITS

52. OST shall provide access at all reasonable times to the baling facility and to all records and documentation relating to conditions at the facility and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives for the purposes of oversight of and implementation of this Order.

53. OST shall use its best efforts to assure that EPA personnel or authorized representatives are allowed access to any contractor utilized by OST in implementing this Order.

54. Nothing in this Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act.

55. OST shall notify EPA and the OST Environmental Program representatives identified in paragraphs 61 and 62 by telephone at least 24 hours before engaging in any clean-up activities at the baling facility. OST shall allow EPA or OST Environmental Program representatives to be on-site at the time of any clean-up activities.

IX. AVAILABILITY AND RETENTION OF INFORMATION

56. The administrative record supporting this Order shall be available for public review at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado from 8 a.m. to 5 p.m., every Federal business day.

57. OST shall make available to EPA and shall retain, during the pendency of this Order and for a period of three (3) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of work under this Order.

58. After the three (3) year period of document retention, OST shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by EPA, shall deliver the documents to EPA.

59. OST may assert confidentiality claims pursuant to 40 C.F.R. Part 2.

60. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to OST.

X. NOTICES

61. OST shall provide copies of all written proposal and reports or documents required to be submitted under this Order to the following EPA representative:

Ron Lillich
U.S. EPA Region 8 (8P-HW)
1595 Wynkoop Street
Denver, CO 80202-1129
Ph: (303) 312-6149
Fax: (303) 312-6341
lillich.ron@epa.gov

Amy Swanson
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129
Ph: (303) 312-6906
Fax: (303) 312-6953
swanson.amy@epa.gov

62. OST must also provide copies of all written proposals and reports or documents required to be submitted under this Order to the following tribal environmental representative:

Robert Pille, Environmental Director
Oglala Sioux Tribe
P.O. Box 2008
Pine Ridge, SD 57770
(605) 867-5236

63. If the date for submission of any item or notification required by this Order falls upon a weekend or federal holiday, the time period for submission of that item or notification is extended to the next federal working day following the weekend or holiday.

XI. RESERVATION OF RIGHTS

64. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to OST as may be necessary.

65. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.

66. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to OST's failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by OST, to request that OST perform additional tasks, and the right to perform any portion of the work herein.

67. Compliance by the OST with the terms of this Order shall not relieve it of its obligation to comply with the Act and/or any other applicable State or Federal law or regulation, and any condition of any permit issued under the Act or any other applicable law or regulation.

XII. FAILURE TO COMPLY

68. Pursuant to section 7003(b) of the Act and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations codified at 40 C.F.R. § 19.4, any failure by OST to comply with this Order may subject it to civil penalties of not more than \$7,500 for each day of each failure to comply with this Order at the discretion of EPA.

XIII. OPPORTUNITY TO CONFER AND MODIFICATION

69. OST has the opportunity to confer informally with EPA concerning the terms and applicability of this Order. If OST desires a conference, it shall contact EPA Region 8 to schedule such a conference within seven (7) calendar days of receipt of this Order.

70. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the order in writing, file the modification with the Regional Hearing Clerk and issue a copy to the OST.

71. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

XIV. NOTICE OF INTENT TO COMPLY

72. Within twenty-four (24) hours of receipt of this Order, OST shall provide written notice to EPA stating whether it will comply with the terms of the Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that the OST may make in its notice(s), and shall not affect OST's obligation to implement the Order.

73. Failure of the OST to provide notification to EPA of intent to comply within this time period shall be deemed a violation of this Order.

XV. EFFECTIVE AND TERMINATION DATES

74. This Order shall become effective upon receipt.

75. Modifications made by EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as the OST is sent a copy by electronic or regular mail or by fax as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

76. This Order shall terminate upon OST's receipt of written notice from EPA that it has demonstrated, to the satisfaction of EPA, that the requirements of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, but not including record retention, have been satisfactorily completed.


XVI. SEVERABILITY

77. If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Order as Modified shall not be affected thereby and shall remain in full force.

IT IS SO ORDERED:

**ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Complainant.**

Date: 11 Sept 2007

By: 
David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 11 September 2007

By: 
Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached ADMINISTRATIVE ORDER was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of same was sent as follows:

Via hand-delivery to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. Environmental Protection Agency
1595 Wynkoop (8RC)
Denver, CO 80202-1129

Via Fax and Certified Mail, Return Receipt Requested, to:

John Yellowbird Steele, President
Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge, SD 57770
Fax: (605) 867-6076

9/12/07
Date


Judith McTernan