

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 FEB -9 AM 9:40

IN THE MATTER OF:)
)
The Oglala Sioux Tribe, Owner, and)
Oglala Sioux Tribe Solid Waste)
Department, Operator,)
)
Redshirt Landfill,)
Oglala Lakota County, South Dakota)
)
Respondents.)

Docket No. **RCRA-08-2016-0602** FILED
EPA REGION VIII
HEARING CLERK

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

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and the Oglala Sioux Tribe (OST) and Oglala Sioux Tribe Solid Waste Department (Respondents). This AOC is issued pursuant to authority granted to the Administrator of the EPA under section 7003 of the Resource Conservation and Recovery Act, as amended (RCRA, or the Act) 42 U.S.C. § 6901, 6973 (Section 7003). This AOC requires the Respondents to perform certain tasks that are described in Sections VIII and IX of this AOC and Appendix A, the Statement of Work at Redshirt Landfill (Landfill) in Oglala Lakota County, South Dakota, in Indian country, within the exterior boundaries of the Pine Ridge Indian Reservation (Reservation). The Landfill is approximately 10 miles south of the Town of Red Shirt, South Dakota, on BIA Highway 41. In entering into this AOC, the mutual objectives of the EPA and Respondents are to identify, investigate, remedy, and/or prevent endangerments to human health and/or the environment from the handling of solid waste at the Landfill, and to ensure that the work agreed to in this AOC is designed and implemented to protect human health

and the environment. Respondents shall finance and perform the Work in accordance with this AOC, or in plans, standards, specifications and schedules developed by Respondents and approved by EPA pursuant to this AOC and incorporated by reference into this AOC.

2. The EPA has determined that Respondents have contributed or are contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste in a manner that may present an imminent and substantial endangerment to health or the environment.

3. The EPA and Respondents acknowledge that this AOC has been negotiated in good faith and is fair, reasonable, and in the public interest.

II. JURISDICTION

4. This AOC is issued under the authority vested in the Administrator of the EPA by section 7003 of RCRA, which the Administrator has delegated to the Regional Administrators of the EPA by Delegations 8-22-A and 8-22-C (April 20, 1994). The Regional Administrator for Region 8 has re-delegated the authority to supervisors in the Office of Enforcement, Compliance and Environmental Justice, Region 8.

5. The EPA notified the State of South Dakota of this action on February 9, 2016, as required by section 7003(a), 42 U.S.C. § 6973(a).

6. Respondents agree to undertake and complete all actions required by the terms and conditions of this AOC. In any action by the EPA or the United States to enforce the terms of this AOC, Respondents agree not to contest the authority or jurisdiction of the EPA to issue or enforce this AOC, and further agree not to contest the validity of this AOC or its terms or conditions.

III. PARTIES BOUND

7. This Order shall apply to and be binding upon the EPA and on Respondents, and employees or contractors acting on behalf of the Respondents.
8. Not later than sixty (60) days prior to any voluntary transfer by Respondents of any interest in the Landfill or the operation of the Landfill, Respondents shall notify the EPA of the proposed transfer. Respondents shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Landfill is transferred. Respondents shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondents.
9. Respondents shall provide a copy of this AOC within seven (7) days of the Effective Date of this AOC, or within 7 days prior to the date that such contractor's services are ultimately retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this AOC. Respondents shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondents shall ensure that their contractors, subcontractors, laboratories and consultants comply with this AOC.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this AOC that are defined in RCRA shall have the meaning assigned to them in the Act. Whenever the terms listed below are used in this AOC, the following definitions apply:

“Day” or “day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the date on which the EPA’s Regional Hearing Clerk enters this AOC following the public comment period which is held pursuant to Section XXI (Public Comment on this AOC).

“AOC” shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

“Landfill” shall mean Redshirt Landfill in Oglala Lakota County, South Dakota, in Indian country, within the exterior boundaries of the Reservation. The Landfill is approximately 10 miles south of the Town of Red Shirt, South Dakota, on BIA Highway 41.

“Work” shall mean all the activities and requirements specified in this AOC including, but not limited to those activities specified in Section VIII (Work To Be Performed) and IX (Additional Work) and Appendix A of this AOC.

“Work Plan” shall mean the plan required in Paragraph 8 of Appendix A of this AOC.

V. FINDINGS OF FACT

11. The OST is a federally recognized Indian tribe.

12. OST owns the Landfill in Oglala Lakota County, South Dakota, in Indian country, within the exterior boundaries of the Reservation. The Landfill is approximately 10 miles south of the Town of Red Shirt, South Dakota, on BIA Highway 41.

13. The Landfill is operated on behalf of OST by the OST Solid Waste Department.

14. The OST Solid Waste Department is a department of OST responsible for providing solid waste collection, transportation, and disposal services to approximately 30 tribal communities on the Reservation on behalf of OST. It is the Reservation's sole landfill and accepts waste from 11 transfer stations throughout the Reservation and commercial waste from the Bureau of Indian Affairs Pine Ridge Agency and the town of Kyle.

15. Approximately 50 tons of municipal solid waste is disposed of at the Landfill daily. The Landfill is subject to the requirements of RCRA Subtitle D.

16. The EPA was notified on Monday, November 9, 2015, that the Landfill was on fire on or before November 9, 2015 (November 9 fire).

17. Smoldering charcoal transported to the Landfill over the weekend is believed to have started the fire.

18. The November 9 fire encompassed the western 1/3 of the Landfill; roughly an area of 1 acre. The uncovered waste 3 -5 feet deep provided the fire fuel. The non-compacted waste created a furnace-type airflow.

19. At the time of the November 9 fire, miscellaneous cylinders including, but not limited to, propane tanks, paint cans, and small drums frequently exploded.

20. Prior to the November 9 fire, the Landfill was covered by a large, exposed pile of municipal waste.

21. EPA responded to the November 9 fire, extinguished it, and left borrow material to ensure proper daily cover.
22. On November 16, 2015, EPA was again notified that the Landfill was on fire, this time in the leachate collection area (November 16 fire). EPA responded and extinguished the fire.
23. The EPA responded to similar solid waste fires at the Landfill in June 2011 and 2013.
24. The OST Solid Waste Department does not regularly screen incoming municipal waste for hazardous household materials and other substances.
25. The EPA, in the past and during the November 9 and 16 fires, observed small drums, pesticide containers, propane tanks, and paint cans in the municipal waste.
26. Access to the Landfill is not restricted. It is fenced only on three sides, and the interior gates are not closed or locked. The Landfill is unattended on weekends.
27. The OST Solid Waste Department is not applying daily cover of six inches of cover at the Landfill and has not for at least the past several months as required by the regulations set forth at 40 C.F.R. part 258.21.
28. The OST Solid Waste Department is not regularly compacting the waste at the Landfill and has not at least for the past several months.
29. The OST Solid Waste Department's Landfill equipment is not and has not for at least the past several months been working. One bulldozer is under repair. The compactor has a blown engine. Every other piece of equipment has rubber tires, most of which are flat and have limited utility in spreading and compacting trash. The maintenance building on-Site is without overhead lighting, and is unsecure.

30. Even when operational, the OST Solid Waste Department's equipment is not effective for Landfill work. The rubber tires are not well-suited for landfill work and often go flat. Frequent rainfall causes the equipment to get stuck in the clay soil at and around the Landfill.
31. Open burning, vermin, and open dumping are recurring problems at the Landfill.
32. Prior to November, 2015, the EPA issued the OST and OST Solid Waste Department a warning letter dated September 19, 2012 and a Compliance Assistance Plan dated August 24, 2014, expressing concern that solid waste conditions at the Landfill and Respondents' continuing non-compliance with the landfill regulations set forth at 40 C.F.R. Part 258 (including requirements to separate waste, apply daily cover, restrict access, and separate leachate from stormwater) were likely to result in fire and/or disease outbreak.
33. Uncovered waste encourages disease carriers and animal scavenging, causes odors, and blowing litter which can affect the health of nearby residents.
34. Unrestricted access to the Landfill allowing human contact with the waste stored and disposed of at the Landfill endangers the health of persons at the Landfill including scavengers, salvagers, workers, and tribal members dropping off trash.
35. Scavengers, workers hauling daily loads, tribal members dropping off trash, and motorists along BIA Highway 41 are at risk of exposure to noxious plumes of gas generated by the uncovered waste, combustion of hazardous substances and wastes in the Landfill, and/or smoke when the Landfill catches fire.
36. Uncovered, uncompacted, unseparated waste poses an ongoing fire risk at the Landfill.
37. Public health will continue to be substantially threatened if the Landfill cannot manage incoming municipal waste.

38. Respondents are unable to properly manage incoming waste due to inoperable equipment and inadequate staffing levels.
39. No other facility on the Reservation is capable of handling the Reservation's waste stream.
40. Emissions from uncontrolled burning of solid waste at the Landfill may contain particulates and pollutants, potentially including the contaminants that pose the human health hazards 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 μm 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. PAHs are formed from the incomplete combustion of certain materials. Some are carcinogenic or cancer-causing.

Volatile Organic Compounds: People in the immediate vicinity of a burn site are likely to be 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 the 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.

41. Based upon evidence received and foregoing findings, the EPA has determined that Respondents' handling, storage, transportation, and /or disposal of solid waste at the Landfill may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of RCRA.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

42. Based on the Findings of Fact set forth above, and the administrative record for this AOC, the EPA has determined that:

- a. Respondents are “persons” within the meaning of sections 1004(13) and (15) of RCRA, 42 U.S.C. §§ 6903(13) and (15).
- b. Waste handled, transported, stored, and disposed of at the Landfill is “solid waste” as defined in section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- c. Respondents have been or are contributing to the handling, storage, transportation or disposal of solid waste at the Landfill within the meaning of section 7003 of RCRA, 42 U.S.C. § 6973.
- d. Respondents’ past or present handling, storage, transportation or disposal of solid waste at the Landfill may present an imminent and substantial endangerment to health or the environment within the meaning section 7003 of RCRA, 42 U.S.C. § 6973.
- e. The actions required by this AOC are necessary to protect human health and the environment because they will prevent future fires and ensure proper handling, storage and disposal of solid waste at the Landfill.

VII. ORDER ON CONSENT

43. Based upon the administrative record for this AOC and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, and in consideration of the commitments set forth herein, the following is hereby agreed to and ordered. Respondents shall comply with all provisions of this AOC, including, but not limited to, all appendices to this AOC and all documents incorporated by reference into this AOC.

44. Respondents shall perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondents and approved by the EPA pursuant to this AOC.

VIII. WORK TO BE PERFORMED

45. On or before the Effective Date of this AOC, Respondents shall designate a Project Coordinator. Respondents shall notify the EPA in writing within five (5) days of the Effective Date of this AOC of the name, address, phone number, electronic mail address, and qualifications of their Project Coordinator. The EPA Project Coordinator will be Susanna Trujillo, 1595 Wynkoop St. Denver, CO 80202, 303.312.7008, Trujillo.susanna@epa.gov. The EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. The EPA and Respondents have the right to change their respective Project Coordinators. Respondents must notify EPA in writing at least 10 days prior to changing their Project Coordinator.

46. The EPA will approve/disapprove of Respondents' Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondents shall be subject to the EPA's review, for verification that such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of Respondents' Project Coordinator must possess all necessary professional licenses required by federal and state law.

47. The EPA Project Coordinator shall be the EPA's designated representative for the Landfill. Unless otherwise provided in this AOC, all reports, correspondence, notices, or other

submittals relating to or required under this AOC shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 45, unless notice is given in writing to Respondents of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA 7003-08-2016-002.

48. Respondents shall undertake and complete all of the Work to the satisfaction of the EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work performed under this AOC shall be under the direction and supervision of Respondents' Project Coordinator and shall be in accordance with the terms of this AOC.

49. Respondents' obligation to perform the Work will begin on the Effective Date of this AOC.

50. A statement of the Work to be performed (SOW) is attached as Appendix A and incorporated into this AOC by reference. Any deliverable submitted pursuant to Appendix A will also become incorporated into this AOC by reference.

IX. ADDITIONAL WORK

51. The EPA may determine, or Respondents may propose, that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in Section VIII above. The EPA will specify, in writing, the basis for its determination that any additional work is necessary.

52. Within five (5) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with the EPA to discuss any additional work. The EPA may modify or withdraw its request for additional work after such conference.

53. If the EPA determines that Respondents must conduct additional work, Respondents shall submit for the EPA's approval a work plan for any additional work within ten (10) days of Respondents' receipt of the EPA's determination that any additional work is necessary, or according to an alternative schedule established by the EPA (Additional Work Plan). The EPA shall review the Additional Work Plan pursuant to Paragraph 8 of Appendix A.

X. REPORTING

54. Beginning thirty days after the Effective Date, and quarterly thereafter until otherwise notified in writing by the EPA, Respondents shall provide to the EPA progress reports including, at a minimum, the following information:

- a) activities conducted pursuant to this AOC in the previous quarter;
- b) summaries of problems encountered during the previous quarter and how they were or are being addressed; and
- c) projected work for the next quarter.

55. The progress reports are to be submitted by the tenth calendar day following the end of each quarterly reporting period to the persons identified in paragraph (45).

XI. MODIFICATION OF THE WORK PLAN

56. If at any time during the implementation of the Work, Respondents identify a need for a compliance date modification or revision of the Work Plan, Respondents shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. The EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this AOC.

57. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondents shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator and the National Response Center at (800) 424-8802. Respondents shall then submit to the EPA written notification of such emergency or threat at the Landfill within 24 hours of such discovery. Respondents shall thereafter submit to the EPA for approval, within twenty (20) days, a plan to mitigate this threat. The EPA will approve or modify this plan, and Respondents shall implement this plan as approved or modified by the EPA. In the case of an extreme emergency, Respondents may act as they deem appropriate, at their own risk, to protect human health and the environment.

XII. ACCESS

58. Respondents shall permit full access to the Landfill to the EPA and its authorized representatives or agents, for the purposes of oversight and implementation of this AOC.

59. Nothing in this AOC limits or otherwise affects any right of entry held by the EPA pursuant to applicable federal laws or regulations.

XIII. AVAILABILITY AND RETENTION OF INFORMATION

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

61. After the document retention period, Respondents shall notify the EPA at least ninety (90) days prior to the destruction of any such documents, and upon request by the EPA, shall deliver the documents to the EPA.

62. Respondents may assert confidentiality claims pursuant to 40 C.F.R. Part 2.

63. Information determined to be confidential by the 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 Respondents.

XIV. DISPUTE RESOLUTION

64. Respondents shall raise any disputes concerning the Work required under this AOC to the EPA, in writing, within fifteen (15) days after receiving written notice from the EPA regarding any aspect of the Work required under this AOC that Respondents dispute. The EPA and Respondents shall expeditiously and informally attempt to resolve any disagreements. The EPA and Respondents' Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within three (3) working days of the first conference, Respondents shall notify the EPA, within three (3) working days, in writing of their objections. Written objections shall identify Respondents' objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondents. The EPA and Respondents then have an additional fourteen (14) days from the EPA's receipt of the objections to reach agreement. If an agreement is not reached within the fourteen (14) days, Respondents may request, in writing, within three (3) working days, a determination resolving the dispute by the EPA's Assistant Regional Administrator for the

Region 8 Office of Enforcement, Compliance and Environmental Justice. To the extent not already provided, the request should provide all information that Respondents believe is relevant to the dispute. If such request is submitted within three (3) working days, the Assistant Regional Administrator shall issue a determination in writing. The EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondents shall proceed in accordance with the Assistant Regional Administrator's decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the Work in accordance with the EPA's decision, the EPA reserves the right in its sole discretion to conduct the Work itself, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as the EPA seeks to enforce this AOC.

65. If the EPA and Respondents reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of the EPA, be incorporated into and become an enforceable part of this AOC.

66. The existence of a dispute and the EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by the EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

XV. PENALTIES

67. Stipulated Penalties. Any time Respondents fail to comply with any requirement of this AOC, Respondents shall be liable for stipulated penalties in the amounts set forth in this Section unless a Force Majeure event has occurred as defined in Section XVI (Force Majeure) or EPA has approved an extension of a deadline.

68. For each day, or portion thereof, that Respondents fail to perform fully any requirement of the AOC in accordance with the schedule established pursuant to this AOC, Respondents shall be liable as follows:

- a. For failure to submit a Work Plan, Respondents agree to pay a stipulated penalty of \$250 for each late day until the document is submitted.
- b. For failure to submit a quarterly report, Respondents agree to pay a stipulated penalty of \$250 for each quarterly report not timely submitted.
- c. For failure to provide any notification required in this AOC, Respondents agree to pay a stipulated penalty of \$250 for each day the notification is late.
- d. For Work that has not been completed as required by this AOC, Respondents agree to pay a stipulated penalty of \$250 for each day Work remains incomplete.

69. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue through the final day of the completion of the activity.

70. Respondents shall pay stipulated penalties within fifteen (15) days of receipt of written demand by the EPA, unless Respondents invoke dispute resolution hereunder with respect to the event(s) giving rise to such stipulated penalties.

71. The docket number of this AOC must be clearly typed on the check to ensure proper credit. Respondents shall pay stipulated penalties by submitting a cashier's or certified check payable to the Treasurer of the United States within thirty (30) days of Respondents' receipt of the EPA's request, and shall be submitted to the following address:

U.S. EPA Region 8
Regional Hearing Clerk
P.O. Box 360859M
Pittsburgh, PA 15251

Respondent shall provide copies of the checks to:

Amelia Piggott, 8ENF-L
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202

72. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a stipulated penalty if it is not paid by the last date required by EPA's written demand. Treasury tax and loan rate is in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of twelve (12) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid in accordance with 4 C.F.R. § 102.13(d) and (e).

73. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondents' obligations to comply with the terms and conditions of the AOC. The

stipulated penalties set forth in this Section do not preclude the EPA from pursuing any other remedies or sanctions which may be available to the EPA by reason of Respondents' failure to comply with the terms and conditions of this AOC.

74. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

75. Civil Penalties. Violation of this AOC may subject Respondents to civil penalties of up to seven thousand five hundred dollars (\$7,500.00) per violation per day. The assessment of penalties are provided for in section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461.

76. Should Respondents violate this AOC or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this AOC.

XVI. FORCE MAJEURE

77. Respondents agree to perform all requirements under this AOC within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of Respondents or Respondents' contractors, which delays or prevents performance of any obligation under this AOC despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (1) as early as possible before it occurs; (2) as it is occurring,

and (3) following the potential force majeure event, such that the delay is minimized to the greatest extent possible.

78. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondents shall orally notify the EPA within forty-eight (48) hours of when Respondents knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondents' rationale for attributing such delay to a force majeure event; (3) state the measures taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or the environment. Regardless of the EPA's response, Respondents shall undertake best efforts to avoid, minimize, and otherwise mitigate the effects of the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondents. Respondents shall be deemed to have notice of any circumstances of which their contractors had or should have had notice.

79. If the EPA determines a delay in performance of a requirement under this AOC is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by the EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure event.

80. If the EPA disagrees with Respondents' assertion of a force majeure, then Respondents may elect to invoke the dispute resolution provision and shall follow the procedures set forth in Section XIV (Dispute Resolution). In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Respondents' best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this Section. If Respondents satisfy this burden, then the EPA will extend the time for performance as the EPA determines is necessary.

XVII. RESERVATION OF RIGHTS

81. Notwithstanding any other provisions of this AOC, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Landfill, including but not limited to the right to bring enforcement actions under RCRA and any other applicable statutes or regulations.

82. The EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements under this AOC, including without limitation the assessment of penalties under section 7003 of RCRA, 42 U.S.C. § 6973.

83. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which the EPA has under RCRA, or any other statutory, regulatory, or common law authority of the United States.

84. Notwithstanding any other provision of this AOC, no action or decision by the EPA pursuant to this AOC, including without limitation, decisions of the Assistant Regional Administrator, the Directors of the Legal and Technical Enforcement programs, or any authorized representative of the EPA, shall constitute final agency action giving rise to any right of judicial review prior to the EPA's initiation of a judicial action to enforce this AOC, including action for penalties for an action to compel Respondents' compliance with the terms and conditions of this AOC.

XVIII. OTHER CLAIMS

85. By issuance of this AOC, the United States and the EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or the EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondents or their officers, directors, employees, successor tribal leaders, administrations, solid waste managers, agents, contractors, or consultants in carrying out actions pursuant to this AOC.

86. Respondents waive all claims against the United States relating to or arising out of work performed under this AOC, including, but not limited to, contribution and counterclaims.

87. Respondents shall bear their own litigation costs and attorney fees.

88. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Landfill, Respondents shall not assert, and

may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XIX. MODIFICATION OF THIS AOC

89. Except for Modification of the Work Plan as provided in Section XI, and extensions of deadlines as provided in Sections (XI) and (XVI), this AOC may only be modified by the mutual agreement of the EPA and Respondents. Any agreed modifications shall: be in writing; be signed by both parties; have as their effective date the date on which they are signed by the EPA; and be incorporated into this AOC on the date signed by the EPA.

90. No informal advice, guidance, suggestion, or comment by the EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by the EPA, incorporated into and enforceable under this AOC.

XX. TERMINATION AND SATISFACTION

91. The provisions of this AOC shall be deemed terminated and satisfied by Respondents upon written notice from the EPA that Respondents have demonstrated that all of the terms of this AOC, including any additional work as may be performed pursuant to Section IX (Additional Work) and any stipulated penalties demanded by the EPA under Section XV

(Penalties), have been addressed to the satisfaction of the EPA. Termination of this AOC shall not terminate Respondents' obligation to comply with: Section XVII (Reservation of Rights) and Section (XIII) (Availability and Retention of Information).

XXI. PUBLIC COMMENT ON THIS AOC

92. The EPA shall provide public notice and a reasonable opportunity for public comment on this AOC. If sufficient interest warrants, as determined by the EPA, a public meeting will be held. After consideration of any comments submitted during a public comment period of not less than 10 days (which EPA may extend), EPA may withhold consent or seek to amend all or part of this AOC if EPA determines that comments received disclose facts or considerations which indicate that this AOC is inappropriate, improper, or inadequate.

XXII. SEVERABILITY

93. If a court issues an order that invalidates any provision of this AOC or finds that Respondents have sufficient cause not to comply with one or more provisions of this AOC, Respondents shall remain bound to comply with all provisions of this AOC not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XXIII. EFFECTIVE DATE

94. This AOC shall be effective when entered with the Regional Hearing Clerk, after the public comment period as specified in Section XXI (Public Comment on This AOC) above.

95. Within 2 business days of signing this AOC, the EPA will provide Respondents with a copy of the signature page of this AOC signed by the Director of the Technical Enforcement Program and Supervisor of the Legal Enforcement Program.

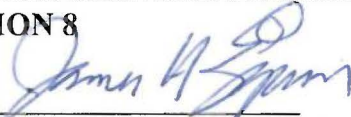
96. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this AOC and to bind the party they represent to this document.

97. Respondents retain their right to assert claims against any third parties with respect to the Landfill.

IT IS SO AGREED:

Date: 2/8/16

ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: 
James H. Eppers, Supervisory Attorney
Regulatory Enforcement Unit
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

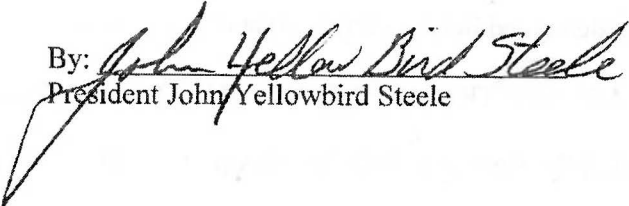
Date: 2/5/16

By: 
Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

IT IS SO AGREED

Oglala Sioux Tribe, Oglala Sioux Tribe Solid Waste
Department

Date: 2-1-16

By: 
President John Yellowbird Steele

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 19, 2016, the original and one copy of the attached ADMINISTRATIVE ORDER ON CONSENT 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:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop (8RC)
Denver, CO 80202-1129

Via email 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

By:  ENF-L

Appendix A: Statement of Work

1. Respondents must continue to monitor the Landfill for additional burning. In the event of a fire recurrence, Respondents must take immediate action(s) necessary to contain and extinguish the fire using measures appropriate for combating a landfill fire.
2. In the event of a fire recurrence resulting in visible plumes of smoke, Respondents must immediately publish and/or broadcast an Air Pollution Alert notifying the public within a 10 mile radius of poor air quality conditions due to the fire and recommending limited exposure to the outside air.
3. In the event of a fire recurrence resulting in visible plumes of smoke, Respondents must immediately notify the National Response Center at (800) 424-8802 in accordance with the notification procedures set forth in the National Contingency Plan, including reporting the existence of smoke plumes which may pose a threat to human health.
4. Respondents must compact waste in daily cells and apply a minimum of six inches of daily cover to limit the spread of fire and to reduce vector attraction.
5. Respondents must maintain a stockpile of appropriate cover material at the Landfill adequate to cover the working face.
6. Respondents must screen waste prior to it entering the Landfill.
7. Within thirty (30) days of the Effective Date, Respondents shall submit a written Health and Safety Plan and it shall be implemented during the Work performed under this AOC. The Health and Safety Plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations and shall be submitted to the EPA for review and comment, but not approval.

8. Within sixty (60) days of the Effective Date, Respondents must complete the Sustainability Evaluation administered by EPA. Upon completion, Respondent must provide EPA with a Landfill Program Work Plan that includes Solid Waste Program budget information, maintenance schedules for existing equipment, and staffing needs. The Work Plan shall be submitted to EPA for approval. After review of the Work Plan, EPA will: (a) approve, in whole or in part, the Work Plan; (b) approve the Work Plan upon specified conditions; or (d) disapprove, in whole or in part, the submission, directing Respondents to modify the Work Plan.

9. Within 120 days of EPA's approval of the Work Plan, Respondents must adhere to the Landfill Work Plan.

10. Within twelve months of the Effective Date or upon the disbursement of IHS or USDA RD grants, Respondents must procure the following landfill operating equipment:

- Landfill compactor
- Wheeled Scraper

11. Upon procurement of above-mentioned equipment, Respondents must create a separate bank account in order to ensure proper funding for maintenance activities. Respondents must adhere to the maintenance manual provided with equipment, and provide EPA with quarterly reports detailing required maintenance and actions completed in accordance with paragraph 58 of the AOC.

12. Within 365 days of the Effective Date, Respondents must improve the building on the Landfill to ensure it contains electricity, heat, and a restroom.

13. Respondents must send a minimum of four (4) OST Solid Waste Department staffers to attend a Solid Waste Association of North America (SWANA) Manager of Landfill Operations training course at a date to be determined after the Effective Date.

14. On or before March 1, 2016, Respondents must obtain a minimum of two bids for installing security gates at all access points around the Landfill.
15. Within sixty (60) days of the Effective Date, Respondents must post the following signage: (1) at the BIA Highway 41 entrance that details the hours of operation, rates, contact information, emergency contact information, and fines associated with open dumping; and (2) at the entrance of the open cell detailing acceptable and unacceptable wastes.
16. Within one hundred eighty (180) days of the Effective Date, Respondents must repair the compromised berm and return it to the original design grade. Repair includes replacing approximately 150 feet of fencing around the compromised berm.
17. Within one hundred eighty (180) days of the Effective Date, Respondents must repair the leachate collection system, including installing leachate piping in the active cell, and clean and flush the existing leachate collection piping to the leachate pond.
18. Respondents shall host during Calendar Year 2016 a meeting of all interested federal agencies to discuss funding, technical, and other assistance available to improve the OST Solid Waste Department's operation and maintenance of the Landfill.

Paragraph	Work to be performed	Date Due after Effective Date
7	Submit a written Health and Safety Plan	30 days
8	Submit a written Sustainability Plan	60 days
8	Submit a written Landfill Program Work Plan that includes Solid Waste Program budget information, maintenance schedules for existing equipment, and staffing needs.	60 days
15	Post the following signage: (1) at the BIA Highway 41 entrance that details the hours of operation, rates, contact information, emergency contact information, and fines associated with open dumping; and (2) at the entrance of the open cell detailing acceptable and unacceptable wastes.	60 days
9	Adhere to the Landfill Program Work Plan	120 days after EPA's approval
16	Repair the compromised berm	180 days
17	Repair the leachate collection system	180 days
10	Procure a landfill compactor and a wheeled scraper	365 days
11	Create a separate bank account in order to ensure proper funding for equipment maintenance	Upon equipment procurement
12	Improve the building on the Landfill	365 days
11	Quarterly equipment maintenance reports	Calendar quarter following equipment procurement.
13	Send a minimum of four (4) OST Solid Waste Department staffers to attend a Solid Waste Association of North America (SWANA) Manager of Landfill Operations training course	TBD
14	Obtain a minimum of two bids for installing security gates at all access points around the Landfill	March 1, 2016
18	Host a meeting of all interested federal agencies to discuss funding, technical, and other assistance available to improve the OST Solid Waste Department's operation and maintenance of the Landfill	during Calendar Year 2016