

ADMINISTRATIVE ORDER ON CONSENT for the CLEANUP, CLOSURE, POST-CLOSURE MAINTENANCE and GROUNDWATER MONITORING at the TUBA CITY DUMP

EPA Docket No. RCRA 7003-09-2024-0001

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WORK TO BE PERFORMED (“WTBP”)
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BIA will submit the Project Cleanup, Closure and Post-Closure Documents (PCPCD), listed below, that describe the work to be performed pursuant to the AOC.

The General Project Cleanup, Closure and Post-Closure Work Plan includes the general project overview and other elements such as: excavation, temporary stockpile, and storage, acquisition and provision of water for purposes of closure activities, site security during closure activities, traffic control and public safety, access roads and conveyances, permits, acquisition of backfill material, grading, compaction and backfill, material, and preparation of land for reuse. This Work Plan attaches a number of appendices, that will include a Nearby Residents Protection Plan to explain dust migration control during closure activities and traffic control and public safety; Permitting Plan; Construction Quality Assurance Plan for construction quality control; Operations and Maintenance Plan that will include post-closure inspection, problem identification, and correction procedures, post-closure maintenance schedule; and a Community Involvement Plan that will include public participation.

The Project Design Report will include elements such as: excavation, temporary stockpile, and storage, access roads and conveyances, grading compaction and backfill.

The Project Engineer Drawings will include elements such as: excavation, temporary stockpile, and storage, acquisition and provision of water for purposes of closure activities, site security during closure activities, traffic control and public safety, access roads and conveyances, acquisition of backfill material, grading compaction and backfill, preparation of land for reuse.

The Project Construction Specifications.

Annual Notice of Funding Available includes closure and post-closure cost estimates.

Annual Work Plan.

Groundwater Network and Monitoring Plan (GNMP) will include post-closure groundwater monitoring.

TCD Closure Report for purposes of closure certification. The TCD Closure Report will be a summary document that summarizes the work conducted to include volumes excavated and backfilled and disposition of waste removed. The Report will be signed and stamped by a professional engineer if required.

PART D. Specific Flexibility Determinations for Cleanup, Closure and Post-Closure

PART E. Groundwater Network and Monitoring Plan

The GNMP will be updated periodically to reflect current conditions. In addition to the items listed below, the GNMP will identify wells to be closed and other information related to well closures. The GNMP describes a final groundwater monitoring event to be performed prior to plugging and abandonment of most of the monitoring wells. The GNMP describes post-closure groundwater monitoring on an annual basis and the monitoring well network that will be used for annual post-closure groundwater monitoring.

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- Installation of Monitoring Wells (2)
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PART F. Execution of Cleanup, Closure, Post-Closure Groundwater Monitoring in Accordance with Approved PCPCD

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Introduction

This Document, titled Work to Be Performed (“WTBP”), is Appendix A to the Administrative Order on Consent (“AOC”) Docket No. _____ between the U.S. Environmental Protection Agency (“EPA”) and the U.S. Department of Interior, Bureau of Indian Affairs (“BIA”) regarding cleanup, closure, post-closure maintenance, and groundwater monitoring, at the Tuba City Dump (“TCD”). The Project Closure and Post-Closure Documents (PCPCD) describe the work to be performed pursuant to the AOC. This WTBP specifies and describes the minimal requirements for the PCPCD submitted by BIA. This WTBP is incorporated into the AOC by reference and is enforceable pursuant to the terms of the AOC. The PCPCD and Groundwater Network Monitoring Plan (GNMP) may also be enforced, pursuant to the AOC.

Terms used in this document shall have the same meaning as those in the AOC, unless otherwise provided herein.

A. Regulatory Compliance and Form of Closure

BIA shall comply with the PCPCD set forth in this WTBP. All cleanup and closure work shall comply with the applicable sections of 40 CFR Part 258 and any other applicable laws and regulations.

BIA proposes to close the TCD by excavating the waste and transporting it for disposal off Hopi land. EPA will review and comment on BIA’s proposal for closing the TCD based on the PCPCD BIA will submit under this WTBP.

B. Compliance Schedule

On June 1, 2023, BIA will Issue for Review the Final Project Closure Work Plan, Final Project Design Report, Final Project Engineered Drawings, and Final Project Construction Specifications. At the same time, it will provide a copy of these documents to the EPA and the Tribes.

On June 1, 2023, BIA will also Issue for Review a Notice of Funding Availability and an Annual

Work Plan for Fiscal Year 2024. At the same time, it will provide a copy of these documents to the EPA and the Tribes.

EPA will endeavor to provide its review and comments to BIA as soon as reasonably possible. The Tribes will have 10 workdays (2 weeks calendar days), to review the Fiscal Year 2024 Annual Work Plan and return their comments to BIA.

Upon receipt of comments from EPA and the Tribes, BIA will have 10 workdays (2 weeks calendar days), to respond to or incorporate the comments received and will issue the Final Annual Work Plan for the Tuba City Dump Project for fiscal year 2024, which will begin on October 1.

By June 1 of each successive year after 2023, BIA will Issue for Review a Notice of Funding Availability and Annual Work Plan for the Tuba City Dump Project for the following fiscal year which will begin on October 1.

The Tribes will have 10 workdays (2 weeks calendar days), to review the Annual Work Plan and return their comments to BIA.

Upon receipt of comments from EPA and the Tribes, BIA will have 10 workdays (2 weeks calendar days), to respond to or incorporate the comments received and will issue the Final Annual Work Plan for the Tuba City Dump Project for the following fiscal year, which will begin on October 1.

BIA's annual Notices of Funding Availability and Annual Work Plans will also be considered PCPCD.

The following definitions will apply to this Compliance Schedule.

"Project Cleanup, Closure and Post-Closure Documents" are, collectively, the Project Closure Work Plan, with 10 Appendices; Project Design Report; Project Engineer Drawings; Project Construction Specifications; Annual Notices of Funding Availability; and Annual Work Plans.

The PCPCD describe how the Tuba City Dump Project will be performed in narrative. These documents include a site description, background, regulatory framework, field activities, project management, and ten attachments to the Project Closure Work Plan (communications plan;

community involvement plan; contractor management plan; nearby residents protection plan; construction quality assurance plan; health and safety plan; operations and maintenance plan; permit plan; sampling and analysis plan; and cost estimates).

“Annual Work Plan” - The Annual Work Plan describes how the Tuba City Dump Project will be performed in the applicable fiscal year, beginning on October 1.

“Design Report” – The Design Report will provide the technical aspects of the project (i.e., supporting calculations, assumptions, construction specifications, drawings.)

“Workday” or “Workdays” - means a workday, excluding designated Federal Holidays, Saturday, and Sunday.

“Calendar Week” - means a full week, including designated Federal Holidays, Saturdays, and Sundays.

“Final” - means the contents of the document are no longer subject to Tribal comment.

“Issue for Review” (IFR) – means BIA will issue the document or drawing for concurrent, external review by EPA, the Hopi Tribe, and the Navajo Nation. BIA will provide the document to one designated point of contact for the Hopi Tribe, one designated point of contact for the Navajo Nation, and one designated point of contact for EPA, by email, and mail for delivery by certified mail, return receipt requested. The designated points of contact are:

EPA: Daniel Fernandez

Hopi Tribe: Dr Carrie Joseph, Director Natural Resources Department -Hopi Tribe.

Navajo Nation: Mr. Warren Roan, Environmental Department Manager - Navajo Nation
EPA.

EPA and the Tribes may change their designated points of contact, either permanently or temporarily, by sending a notification via e-mail.

BIA will also post the document on the SharePoint Site. Tribal comments received by the BIA will not be binding on the BIA.

EPA Review will be for review and comment. EPA comments shall be binding on BIA. Disputed EPA comments may be resolved through the Dispute Resolution process of the AOC.

C. Project Cleanup, Closure, and Post-Closure Work Plan

BIA has submitted to EPA for review and comment, a Draft Project Closure Work Plan, supplemented by: Communications Plan, Community Involvement Plan, Contractor Management Plan, Groundwater Network & Monitoring Plan, Operations & Maintenance Plan, Sampling & Analysis Plan, Health & Safety Plan, Permitting Plan, Nearby Residents Protection Plan, Construction Quality Assurance Plan, all of which were attached to the Project Closure Work Plan as appendices. BIA has also submitted a Draft Project Design Report, Draft Project Engineer Drawings and Draft Project Construction Specifications. The Project Closure Work Plan specifies BIA's plans to move all waste in the TCD to one or more locations off Hopi land and develop the current location of the TCD for unrestricted reuse. After EPA review and comment on the Draft PCPDC, BIA will finalize the PCPDC and will issue the Groundwater Network and Monitoring Plan (GNMP) as a separate document.

The PCPCD provide for all aspects of the cleanup, closure, and post-closure maintenance of the TCD. The PCPCD provide design details related to significant aspects of the cleanup, closure, and post-closure and shall include the standards and specifications that shall be attained by the cleanup, closure, and post-closure activities.

The PCPCD shall contain, at a minimum, the following:

C1. PCPCD Primary Content

1. Plan Overview

The PCPCD will provide an overview and summary of the cleanup and closure process from planning to completion.

2. Cleanup, Closure and Post-Closure Cost Estimates

The PCPCD shall include an itemized cost estimate for (a) all closure activities, and may include

costs associated with construction, water acquisition/provision, and inspection and performance verification prior to construction completion and certification of closure, and (b) post-closure long-term maintenance of the reclaimed Tuba City Dump Site.

3. Excavation, Temporary Stockpile, or Storage

The PCPCD shall detail the approach, activities, dimensions, elements, requirements, and provision, at the initial design level for (1) excavating the TCD waste, (2) securing locations for temporary stockpiling of TCD wastes, (3) defining procedures for radiation/contaminant testing and storage of waste, and (4) specifying the timing for transferring waste into and out of any proposed temporary stockpile. This section shall fully detail the volume, expected weight, and density of waste, that shall be excavated, tested, handled, and stored. The PCPCD will contain sufficient provisions to ensure that the public and animals do not contact wastes at any time during such activities.

The PCPCD shall also provide initial design drawings and description of any borrow soil stockpile areas, and detail how such soils will be stockpiled and secured during cleanup and closure activities.

4. Migration Control During Cleanup and Closure Activities.

The PCPCD will provide a complete plan for controlling migration of excavated material during cleanup and closure activities, including but not limited to erosion and dust controls that will be applied to each activity. The PCPCD will specify the methods by which dust levels will be monitored, the equipment to be used, and the criteria for fugitive dust emissions from closure activities.

5. Acquisition and Provision of Water for Purposes of Cleanup and Closure Activities

The PCPCD will provide for the acquisition of water for construction and dust control for the cleanup and closure of the TCD.

6. Site Security During Cleanup, Closure and Post-Closure Activities

The PCPCD shall provide a description and plan for personnel and property security for all cleanup, closure and post-closure activities, and locations. The plan shall provide contingencies for possible security incidents and specify who will be responsible for providing and monitoring security.

7. Traffic Control, and Public Safety

The PCPCD shall ensure public safety at all locations and stages of work, including but not limited to the TCD site, waste stockpiles or storage locations, routes of waste or borrow material transport, and locations where vehicles and equipment related to closure activities (such as waste or soil hauling trucks, water tank trucks, front-end loaders, or excavators) are used. The PCPCD shall cover all periods of cleanup and closure (active and inactive). The PCPCD shall provide contingencies for public safety, including those responsible for providing and monitoring during cleanup and closure. The PCPCD shall also detail how the construction site will prevent public intrusion during operations.

The PCPCD will provide for routing traffic, that minimizes congestion and maximizes safety, with applicable drawings.

8. Access Roads and Conveyances

The PCPCD shall identify road construction and/or modifications required to complete the cleanup and closure. The PCPCD shall also provide for road repairs and/or rehabilitation required as a result of the cleanup and closure. The PCPCD shall provide a detailed description of the routes used to transfer waste and borrow soils to be used for backfilling. The PCPCD will detail haul routes and heavy equipment operations, during the cleanup and closure, detailing traffic controls.

9. Permits

The PCPCD shall identify permits, approvals, and/or authorizations, necessary for the performance of the cleanup and closure work. The PCPCD include site-specific flexibility pursuant to 40 CFR Part 258, the authorizing entity, the perceived requirements, and the process of obtaining the required permits, approvals, or authorizations.

10. Acquisition of Backfill Material

The PCPCD shall provide analysis to determine the weight and/or volume of backfill material needed for the cleanup and closure of the TCD. The PCPCD will propose borrow source locations and specify the materials and construction methods required for backfilling the TCD disposal cells. BIA shall coordinate borrow source locations with the state or tribal officials. The PCPCD shall describe the design to restore the TCD site and borrow source locations, if applicable. The restoration design shall include calculations, drawings, and specifications for construction.

11. Grading, Compaction, and Backfill

Backfilled areas described in paragraph 10 will be constructed to resist erosion, provide adequate surface water drainage, and prevent surface water accumulation. The PCPCD shall include excavation and grading plans, detailing final grading. Construction specifications will be developed for backfill compaction, drainage controls, and repairs.

12. Preparation of Land for Reuse

The PCPCD shall provide methods, design, construction specifications, and plans, to restore the TCD site for beneficial land use by the Hopi Tribe and Navajo Nation. This will include final grading.

13. Methane Monitoring

Methane Requirement Waiver. Gas monitoring and subsurface investigations at the TCD have precluded methane gas generation. BIA shall provide justification that the requirements for methane detection and monitoring, in accordance with 40 C.F.R. § § 258.23 and 258.61, and the Tribal New Source Review (“TNSR”) methane permit, are not applicable, or provide a plan for

meeting the requirements. Measures to control methane and other bio-gasses (e.g., hydrogen sulfide), an application for site-specific flexibility, or a waiver, will be included in the PCPCD. The PCPCD will identify additional data needed to assess biogas requirements or identify and present a waiver application. Data gaps, if any, will be addressed during the Draft Final Design work.

14. PCPCD Construction Quality Control and Closure Certification

The PCPCD shall include a Construction Quality Assurance Plan. A professional engineer will review and certify the plan.

15. Post-Closure Inspection, Problem Identification, and Correction Procedures

The PCPCD will include post-closure inspection and monitoring as part of an Operation and Maintenance Plan. The monitoring will include subsidence and erosion. This plan shall include post-closure inspection frequencies and reporting requirements in accordance with 40 CFR Part 258.

16. Post Closure Maintenance Schedule

The PCPCD will provide an Operation and Maintenance Plan that will comply with the applicable requirements of 40 CFR Part 258 Subpart F. The Operation and Maintenance Plan shall establish the schedule and frequencies of inspections, evaluations, and other maintenance that shall occur during the post-closure monitoring period in accordance with the applicable requirements in 40 CFR Part 258.

17. Nearby Residents Protection Plan

The PCPCD shall include a Nearby Residents Protection Plan, which describes inspection and monitoring systems to be used during cleanup construction, to protect dwellings and other structures near the project area.

The Feasibility Study (“FS”), identified Navajo Nation residents who live north and northeast of, and in proximity to the TCD. The Nearby Residents Protection Plan shall include at a minimum:

- Spatial zones to which various elements of the Nearby Residents Protection Plan shall apply;
- Which residents qualify for inspection and monitoring, prior to and after cleanup of the TCD;
- Where inspection and monitoring activities will be located/performed;
- Who will coordinate and manage inspections and monitoring described in the Nearby Residents Protection Plan and what services and means will be provided for responding to issues;
- How BIA will document and account for the condition of residences, ancillary structures, and the belongings of residents subject to the Nearby Residents Protection Plan before and after the construction period;
- What forms residents, if any, will be asked to sign;
- Provisions for coordination with the Navajo Nation chapter and tribal governments during cleanup and closure activities;

The PCPCD will include communications about the Nearby Residents Protection Plan in the Community Involvement Plan.

18. Community Involvement Plan

The PCPCD include a Community Involvement Plan (“CIP”) which shall lay out the events and strategies for community involvement, public outreach, public notification, and managing statutory public comment periods for the activities required under this AOC, and their respective timing. At a minimum, the CIP shall address these communities:

- Tuba City Community and Officials
- Upper Village of Moenkopi Community and Officials
- Lower Village of Moenkopi Community and Officials
- The Hopi Tribal Council Department of Natural Resources, Hopi Tribe
- Navajo Nation Tribal Council and the Navajo Nation EPA
- Navajo Nation Tuba City Chapter Officials
- Navajo Nation residents who may be affected by the Nearby Residents Protection Plan

The CIP shall include provisions for:

- Periodic project-level meetings (such as stakeholder meetings) as may be appropriate;
- Key decision points for public participation;

- Provisions for keeping residents and interested stakeholders continually informed during the actual closure field work;
- Provisions for receiving, considering, and if necessary, responding to formal public comments during required public comment periods.

BIA shall provide EPA, the Hopi Tribe, and the Navajo Nation an opportunity to comment on a draft of the CIP before finalizing the document. BIA shall participate in and provide information for public outreach, notification, and public comment in accordance with the CIP or otherwise as required by law.

19. Provisions for Water for Closure Activities

The PCPCD include a plan for the source, volume, necessary treatment, rate of use, and total use of water for cleanup and closure activities. The PCPCD may incorporate, as appropriate, the analysis in the FS of the source and availability of water for dust suppression during closure and cleanup activities. BIA shall comply with the following provisions related to acquisition of water for these closure activities:

Water from existing public water supply wells and from Pasture Canyon Reservoir is a scarce tribal resource and will not be used for the purposes of the closure.

The preferred construction water source is a tie-in to the Hopi Tribe's Moenkopi wastewater treatment plant, or the Navajo Nation's Tuba City wastewater treatment plant. If these sources of water are used, BIA shall confirm, prior to delivery, that the water meets the standards of the EPA National Pollutant Discharge Elimination System (NPDES). The PCPCD shall include a plan for documenting this compliance. Because effluent from these plants has sporadically been out of compliance with respect to coliform bacteria and other biological hazards, disinfection of each truck is likely necessary when using a treatment plant water source.

D. Site-Specific Flexibility Determinations for Cleanup and Closure

BIA shall comply with the prescriptive standards in 40 CFR Part 258 unless BIA obtains a "Site-Specific Flexibility Determination" (SSFD) from EPA. In drafting the solid waste requirements of RCRA, Congress authorized EPA to establish regulatory criteria for MSWLFs, but did not provide EPA with permitting authority. Instead, the statute provides for EPA to approve state

permit programs to implement the regulations. For that reason, EPA adopted prescriptive standards that apply independent of an applicable EPA-approved state permit program and established a process for the consideration of site-specific flexibility requests (“SSFRs”), and the issuance of site-specific flexibility determinations by the director of EPA-approved state’s MSWLF permit programs. However, because states generally do not have jurisdiction in Indian Country, EPA reviews SSFRs and makes SSFDs in Indian Country. Because the TCD is in Indian Country, BIA must submit any SSFRs to EPA.

The PCPCD shall include a description of any anticipated SSFRs and the schedule shall incorporate the process for obtaining them, including public notice and comment pursuant to 40 C.F.R. Part 258 and EPA Draft Guidance, Site Specific Flexibility Requests for MSWLFs in Indian Country, EPA 530 R-97-016 (August 1997) (“SSFR Guidance”) and any relevant related requirements, such as those under the National Environmental Policy Act, the National Historic Preservation Act, or the Endangered Species Act.

E. Groundwater Network and Monitoring Plan (GNMP)

In accordance with the requirements of 40 CFR §258.61, BIA shall provide to EPA a Groundwater Network and Monitoring Plan (GNMP) for TCD or shall submit SSFRs for any requirement from which it seeks the flexibility provided for in the regulations. In addition to any other information, analysis, plans, or specifications necessary to appropriately plan for monitoring of groundwater, the GNMP shall contain, at a minimum:

Installation of Monitoring Wells. The network will consist of a combination of existing monitoring wells, identified in the Remedial Investigation (RI) and, if needed, construction of additional monitoring wells. The GNMP shall identify the information needed to identify well locations, provide construction and installation details, and present the strategy for determining lithology and well screen placement. At the conclusion of the well installation, BIA shall provide a report detailing the well boring logs and final construction.

Establishing the Well Network to be Monitored. The GNMP shall identify all available monitoring wells, the locations of new monitoring wells to be installed as part of closure activities, and the wells that BIA proposes to monitor post-closure. The objectives and rationale for monitoring each well in the network shall be described. The GNMP shall provide the

construction details and the time series monitoring data for all wells. The GNMP shall include a reasonable number of deep monitoring wells in the Kayenta-Navajo transition zone unit to verify vertical gradients.

Groundwater Analysis and Frequency. The GNMP shall provide the analytical parameters and other measurements to be tested during groundwater monitoring, the rationale for the measurements, and the frequency with which they will be analyzed. The GNMP shall also identify the analytical methods to be used by the laboratory.

Gauging Water Levels. The GNMP shall provide for the measurement of water levels for the determination of hydraulic gradient, flow directions, and velocities. The schedule in the GNMP shall include the frequency with which water level measurements will be taken.

Groundwater Monitoring Schedule and Duration. The GNMP shall identify the schedule, frequency, and rationale for monitoring, of each well in the network, consistent with the requirements of 40 CFR Part 258 Subpart E.

Groundwater Monitoring Cost Estimate. The GNMP shall provide an estimate of the costs of monitoring during the post-closure monitoring duration.

Groundwater Reporting. Within 45 days after each field monitoring event, and/or at other intervals identified in the final GNMP, BIA shall submit to EPA and the Hopi Tribe a Groundwater Network Monitoring Report with the results of the recent monitoring data, including analytical and gauging data for wells in the monitoring network. The report will also include an iso-contour figure of the piezometric surface, the groundwater gradient, and other pertinent data from the monitoring. The report shall include an evaluation of the data, including conclusions as to continued natural containment of contaminants of concern in groundwater.

F. Execution of Closure, Post-Closure Maintenance, and Groundwater Monitoring in Accordance with PCPCD

After review and comment on the Draft PCPCD by EPA, and after coordination with the Hopi Tribe and Navajo Nation, BIA shall finalize the PCPCD and execute closure and post-closure activities in accordance with the PCPCD and all other provisions of the AOC.

Certification of Closure.

Upon completion of all closure activities, in accordance with 40 CFR § 258.60, BIA shall submit to EPA a certification by a registered professional engineer that the TCD has been closed in accordance with the AOC.

If the period of closure activities is delayed beyond the Project Compliance Schedule, then EPA may request that BIA conduct supplemental groundwater monitoring and measure water levels on a set of existing monitoring wells prior to BIA's certification of closure. EPA shall provide: (1) well locations to be measured and monitored; and (2) analyses to be performed. BIA shall conduct the sampling and measurements within 180 days of EPA's written request or by an alternate deadline as justified by BIA and concurred with by EPA in writing. BIA shall submit a report on the data obtained from such monitoring within 45 days of completion of the sampling event.

After certifying the completion of closure, BIA shall conduct all post-closure inspections, problem identification, and maintenance work, in accordance with and on the schedule provided in the PCPCD, and shall document all such maintenance and inspection work, maintain the documentation, and provide copies of documentation to the Hopi Tribe and Navajo Nation as required by the AOC and WTBP and applicable regulations. If problems are identified during post-closure inspections, BIA shall perform all corrective measures and periodic reassessments as determined necessary by the inspection and as required by the recordkeeping requirements of 40 CFR Part 258 and by the AOC and WTBP.

After certifying the completion of closure, BIA shall conduct all post-closure groundwater monitoring work in accordance with and on the schedule provided in the GNMP pursuant to 40 CFR § 258.61, shall document all monitoring activities, sampling results, analysis, and reports as required in the GNMP, maintain such documentation, and provide documentation to the Hopi Tribe and Navajo Nation as required by the GNMP.

G. Record Keeping and Information Repository

BIA shall maintain a records repository for the TCD. The repository location may be subject to a

site-specific flexibility determination pursuant to 40 CFR § 258.29. The repository shall contain all records required to be maintained pursuant to RCRA, see 40 CFR § 258.29.