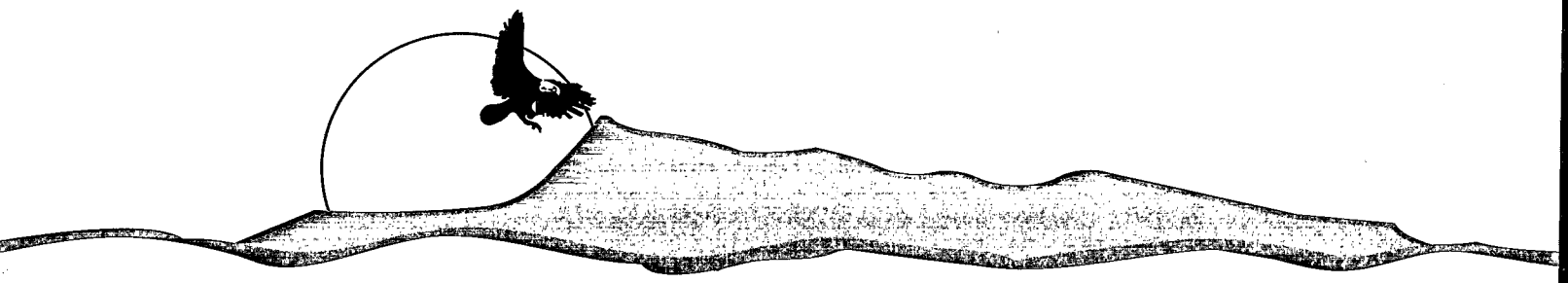
United States
Environmental Protection
Agency

Solid Waste
and Emergency Response
(5303W)

EPA 530-N-00-008
Fall 2000
www.epa.gov/osw

EPA

Native American Network



Federal Agencies Unite to Help Tribes Solve Solid Waste Problems

In an exceptional gesture of solidarity, nearly a dozen Federal agencies joined forces to help Tribes close high-threat open dump sites around the country. At a signing ceremony on Friday, August 11, 2000, at the Tribal Association for Solid Waste and Emergency Response (TASWER) Resource Conservation and Recovery Act (RCRA) conference in Washington, DC, these Federal agencies signed a Memorandum of Understanding (MOU) to provide additional assistance to Tribes with the closure or upgrade of their high-threat open dumps. Since 1999, a multi-agency Tribal solid waste task force provided $4.1 million to 18 Tribes to assist with the closure or upgrade of their high-threat open dumps.

The MOU was signed by EPA, the Department of Interior's Bureau of Indian Affairs (BIA), the Department of Agriculture's Rural Utilities Service (RUS), the Department of Defense, the Department of Health and Human Service's Indian Health Service (IHS), and the Department of Housing and Urban Development. Other agencies that support this effort are: the Federal Aviation Administration, the National Oceanic and Atmospheric Administration, the United States

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Federal Agency Commitments Under the MOU

EPA – will provide financial and technical assistance to Tribes for planning, assessment, training, and community outreach as well as limited financial assistance for solid waste management demonstration projects.

Bureau of Indian Affairs – will assist Tribes with their solid waste problems, including assessing the threat to public health and the environment from open dumps on Indian lands, assisting Tribes to establish alternative disposal methods, and assisting them with closure of open dumps. In addition, officials have agreed to provide training and technical assistance to operate and maintain Tribal solid waste facilities.

Indian Health Service – will assist Tribes to establish alternative disposal methods, then assist them with closure of open dumps. Similar to BIA, IHS will also offer technical assistance to operate and maintain Tribal solid waste facilities.

Rural Utilities Service – will encourage applications from Indian Tribes for direct loans to develop water and wastewater systems, including solid waste disposal systems on reservations. RUS has also committed to consider for funding complete applications from Indian Tribes for the solid waste management grant program. These grants provide technical assistance and/or training to reduce or eliminate pollution of waste resources and to improve planning and management of solid waste facilities.

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Shoshone-Bannock Tribes Confront Hazardous Waste Management Issues

Located on privately-owned land within the Shoshone-Bannock Tribes' Fort Hall Indian Reservation is a phosphorus production facility formerly owned by FMC Corporation and now owned and operated by Astaris Idaho, LLC. This facility is in the process of dealing with hazardous waste management issues that have long held the attention of the Shoshone-Bannock Tribes. Namely, these issues involve: EPA's approval of the Pocatello facility's request for a case-by-case (CBC) extension to the RCRA land disposal restrictions (LDR); treatment standards applicable to the wastes the facility generates; and a 1998 Consent Decree between the Department of Justice (DOJ), EPA, and FMC to address RCRA compliance issues (*United States v. FMC Corp*, Civ. 98-0406-E-BLW). EPA views the Consent Decree and the CBC as compelling the company to provide necessary treatment capacity to properly manage hazardous waste at the facility.

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Federal Agencies Unite to Help Tribes Solve Solid Waste Problems, from page 1

Geological Survey, the Agency for Toxic Substances and Disease Registry, and the United States Coast Guard.

The agreement established short- and long-term goals to assist Tribes with their waste management programs. The agreement links the agencies in a cooperative effort that will utilize technical and managerial aspects that each of the agencies can provide.

Open dump sites on Indian lands could cost $126 million to close or upgrade, according to a 1998 IHS report to Congress. The report identifies 1,104 open dumps on Indian lands with 142 classified as high-threat sites. There are still more open dumps in Indian Country that have not yet been officially counted.

To help Tribes promote safe solid waste management on Indian lands, EPA, BIA, and IHS formed the multi-agency Tribal Solid Waste Interagency Workgroup in April 1998. The Tribal Open Dump Cleanup Project is part of the workgroup's effort to coordinate Federal assistance for Tribal solid waste management programs.

The MOU is an historic cooperative effort for agencies to pool resources for safely and effectively improving the health conditions on reservations that lack these services.

"This Open Dump Cleanup Project is a fine example of what we can achieve when we work together. Open dumps can present significant environmental problems and if left uncontrolled could cause health problems to people living near these pollution sources," said Timothy Fields, Jr., Assistant Administrator for the EPA Office of Solid Waste and Emergency Response.

"The management of solid waste is a critical issue for Tribal people," BIA Assistant Secretary Kevin Gover said. "I'm glad to see that all the players are cooperating to bring this effort into the 21st century."

Michael H. Trujillo, Director of the Indian Health Service said "The Federal Tribal Solid Waste Interagency Workgroup partnership will lay the foundation for even greater strides in eliminating health disparities for American Indians and Alaska Natives as healthier environments are established."

Federal agency cooperative efforts will first identify facilities, then work together to provide Tribal governments the necessary funding for training, technical assistance, planning, implementation, closure, and post-closure activities.

"I'm proud of the Federal agencies that have provided resources to improve waste management in Indian Country. I thank the Tribal governments for their persistence and cooperation in clarifying the need to address the problems associated with open dumps in their communities," said Lynn G. Cutler, Senior Advisor to the White House chief of staff for Indian affairs. "This interagency effort is a wonderful example of what can be achieved when agencies work with Tribes, and leverage authorities and appropriations for a common purpose. In addition to assisting 18 Tribes with the closure or upgrade of high-threat open dumps, the project is a significant step toward helping Tribes to complete and implement integrated waste management plans, develop realistic solid waste management alternatives, and develop post-closure programs," she said.

For more information on open dumps on Indian lands or to obtain a grant solicitation package, visit EPA's website at: http://www.epa.gov/tribalmsw or contact Luke Jones at (703) 605-0728.

TASWER and Agency Reps at the MOU Signing (left to right): Laura Weber, St. Regis Mohawk Tribe; Ben Smith, EPA; Lydia Olympic, Igiugig Village Council; Timothy Fields, EPA; Virginia Washington, Native Village of St. Michael, AK; Christopher McLean, DOA-RUS; Sherri W. Goodman, DoD; Francis Harjo, HUD; Sharon Blackwell, BIA; Cynthia Pilot, Louden Tribal Council, Galena Bay, AK; Gary Hartz, IHS; Sylvia Lowrance, EPA; Jeff Tomhave, TASWER; Shiela Seven Starr, Cherokee Nation, OK.

Agency Commitments, from page 1

Department of Defense – will work cooperatively with Federal agencies and Tribal governments to identify DoD contributions to noncompliant municipal solid waste sites.

Housing and Urban Development, Office of Native American Programs – will continue to provide financial and technical assistance to Tribes through programs such as Indian Housing Block Grants. HUD will also use its technical assistance network to encourage Tribes to address solid waste management needs within their Indian Housing Plan. Finally, the agreement calls for the HUD representative to request consideration, when appropriate, by the Secretary of HUD for funding from discretionary housing program funds for solid waste remediation and management projects that meet eligibility requirements.

MUNICIPAL SOLID WASTE

www.epa.gov/tribalmsw

Blackfeet Nation Tribal Open Dump Cleanup Project

In the Fall of 1999, the Tribal Solid Waste Interagency Workgroup awarded the Blackfeet Nation a $110,000 grant to provide for open dump closure activities. In applying for the grant, the Blackfeet Nation indicated that the request for funds was to finance the closure of a 70 acre open dump. Although the initial plan was for the Tribe to construct a new landfill on the reservation adjacent to the open dump, current plans are to finance a transfer station and to transport waste to a licensed off-reservation landfill.

The problem of open dumps has plagued the Blackfeet Nation Reservation for decades. However, on October 9, 1997, the Blackfeet Nation began the process of closing the old open dump. As funds for planning became available through the Open Dump Cleanup Project, the Tribe devoted other resources to applying a cover over the open dump and other cleanup activities on-site. Since there were no soil or water samples taken near the open dump, no baseline data is available to compare current conditions. High winds at the site are a serious problem resulting in blowing garbage and possible fire hazards.

The funds allotted through the Open Dump Cleanup Project are vital to the Blackfeet Nation as the Tribe addresses the open dump situation. However, the lack of adequate funding makes the task of closing open dumps a daunting task. Although the primary cover has already been placed on the dump, there are still many issues the Tribe needs to address. These tasks include soil placement and compaction, revegetation, erosion control, installation of groundwater monitoring wells and methane monitoring equipment, baseline monitoring, post-closure plan development, and construction quality assurance. The Tribe will use funds from the open dump grant to address the planning portions of these activities. In order to adequately and effectively close the used portion of the 70-acre open dump, the Blackfeet Nation decided to use a portion of their grant money to hire a temporary closure coordinator to oversee all cleanup activities on-site.

For further information contact Tina Diebold, EPA Region VIII, (406) 441-1130, Ext. 227. ✻

WASTE MANAGEMENT IN INDIAN COUNTRY

Pueblo of Taos Open Dump Cleanup Project

The Tribal Solid Waste Interagency Workgroup awarded the Pueblo of Taos a grant for its Open Dump Cleanup Project. The grant funding enabled the Pueblo of Taos to cap its open dump, provide post-closure maintenance and monitoring, establish a transfer station and/or curbside collection service, and provide outreach to the community. In addition, the Pueblo hired a project director familiar with the Tribe's process. The Tribe used an erosion control cover, infiltration layer, and a clay/high-density polyethylene (HDPE) liner. For post-closure maintenance and monitoring, sampling wells were drilled and drive points set to trap water flows down gradient from the dump. To assess the effects of a transfer station or curbside collection service, illegal dumping activity was monitored. The Taos Pueblo Utility Service (TPUS) Board held public meetings, gave presentations at schools, and conducted community surveys to address the solid waste management needs. The closing of the open dump and development of alternative solid waste management options will protect the health of the community and prevent environmental damage to wetlands, the aquifer, and the Pueblo's bison herd.

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Realities of RCRA on Tribal Lands: Stabilizing the Environmental Health of Indian Country

On August 10-11, 2000, the Tribal Association on Solid Waste and Emergency Response (TASWER) and over 70 Tribal representatives came together in Washington, DC, to discuss RCRA. The meeting allowed Tribal environmental leaders and Council members to become better informed about the law and offer their reactions to the present system. What follows is a brief summary of their suggestions and needs discussed during the meeting.

RCRA, the law that governs the management of solid and hazardous waste, considers Tribes as municipalities. According to 42 U.S.C. §6903, sec. (13) a municipality is:

> *(A) ...A city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for planning or administration of solid waste management, or an Indian Tribe or authorized Tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.*

This definition severely limits the ability of Tribes to create and stabilize a strong environmental infrastructure. According to meeting participants, the RCRA definition of municipality does not provide a foundation for Tribal solid and hazardous waste disposal programs. Inevitably, a foundation for such programs must start with money. Although RCRA allows stable funding for States, entities that have a tax-base and can function independently, the law does not provide similar funding for Tribes. Because of this reality, Tribes are forced to compete with each other and other municipal groups for a very small pot of funding dollars. Most Tribal environmental directors spend more time looking for money to fund their programs than on implementation of those programs. Although they may find money this year, next year's funding is not guaranteed or even a probability in many cases.

Jeff Tomhave, the Executive Director of TASWER, speaks at the TASWER RCRA meeting.

In addition to unstable funding, several speakers stressed that Tribal environmental departments face public education needs. The lack of environmental education leads to community members dumping waste at any convenient spot. Often, Tribal Council members do not prioritize solid waste issues because they are not aware of the impact of improperly disposed of waste. Children have made open dumps and burn barrels their playgrounds and their health is affected each day.

In addition to the environmental education needs of the Tribal community, most environmental departments face the challenge of educating the general public, and State and Federal governments. These entities not only contribute to the waste problems, they also have the ability – and in some cases the responsibility – to assist in cleanup and stabilization programs, according to conference participants.

The realities of RCRA change with each Tribe, but the overwhelming needs that are consistently present start with funding and education.

During the TASWER RCRA conference, attendees were challenged to propose changes to the current system. The following suggestions were made:

Suggested Legislative Changes

- Create a Tribal funding section within the current RCRA law that will help Tribes build and stabilize solid and hazardous waste programs and educate communities.
- Amend the Indian Health Care Improvement Act to make solid and hazardous waste disposal a priority.
- Amend the General Assistance Program (GAP) to function in a manner similar to territories. Currently, U.S. territories are given one grant to deal with all EPA activities. Tribes could be treated in a similar manner with cooperative agreements.
- Create a "Treatment As a State" provision in RCRA.

Suggested Policy Changes

- Enter into cooperative arrangements with EPA where Federal resources

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Realities of RCRA on Tribal Lands: Stabilizing the Environmental Health of Indian Country, from page 4

will be transferred to Tribes to develop regulatory programs.

- Prioritize a complete open dump assessment so that true facts are found, the full problem is assessed, and changes are implemented based on the realities.

- Allow Tribes to use GAP money for solid waste implementation.

Suggested Changes for Working in the Present System

- Courts have ruled that the EPA can enter into site-specific agreements with Tribes. So, in theory, EPA could enter into an agreement with Tribes that define the cooperative relationship between the two entities. That relationship can be published as Federal regulation and become a site-specific plan under Part 258 of the Federal regulations implementing RCRA.

- Currently, the Defense Environmental Restoration Act allows Tribes to enter into an agreement with the Department of Defense to cleanup DoD sites. Many people are not aware of this law, but could use it for cleanup.

- Explore alternative grant and funding opportunities with all Federal agencies (i.e., Rural Utilities Service, Department of Agriculture, Department of Commerce, Department of Defense, etc.).

- Create a complete database that details funding opportunities and is available to Tribes.

The best solutions are still being sought. TASWER is collecting data and opinions from Tribes throughout the country and will issue a publication that details many of the suggestions above. For further information contact Heather Taylor at TASWER, (202) 331-8084, ext. 226. ❂

Pueblo of Taos Open Dump Cleanup Project, from page 3

The Pueblo of Taos has completed its closure of the 5.4 acre dump by utilizing the solid waste closure/post-closure guidance developed by the EPA Region VI Solid Waste staff. Technical assistance and review of the final cover and post-closure care plan documents was provided by EPA Region VI Solid Waste staff.

In September 1999, the Pueblo of Taos submitted a Final Closure/Post-Closure Care Plan to EPA Region VI for review. By implementing an Open Dump Cleanup Project, the TPUS Board brought the Pueblo of Taos into compliance with 40 CFR 258. The Tribe plans to implement a solid waste management plan in association with the closure project in order to prevent the degradation of the wetlands and to protect the bison herd.

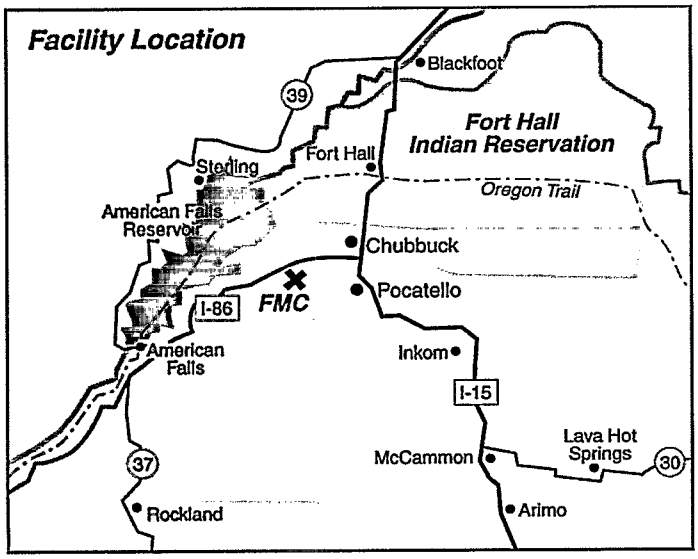
The Indian Health Service (IHS), in cooperation with the Tribe, prepared plans and specifications for closure of the existing site. In accordance with the requirements of the Resource Conservation and Recovery Act (RCRA), the clay cover included a six-inch erosion layer and an 18-inch infiltration layer. A low potential for erosion exists in the constructed cover (with surface slopes not exceeding five percent). The cover soil was hauled to the site because on-site soils were not adequate to meet permeability requirements. The final cover was seeded with native dryland grasses. The IHS has recommended no monitoring for methane gas at the site, unless site or adjacent land uses change. TPUS completed construction of the open dump cover in November 1999. Final inspection of the cover was conducted by the Pueblo of Taos Governor, TPUS Board Chairman, the Tribal Administrator, the Pueblo of Taos Realty Officer, the Pueblo of Taos Project Manager, the IHS Project Engineer, construction contractor, and contractor superintendents.

The Pueblo of Taos Tribal Council recently approved a location for the construction of the transfer station adjacent to the "old landfill site." The IHS is assisting the Tribe by finalizing construction documents specific to that location, while the project staff is preparing a bid solicitation and other documents. The construction of the transfer station should begin sometime in early 2001.

For further information contact Anan Tanbouz, P.E., EPA Region VI, at (214) 665-8195. ✷

WASTE MANAGEMENT IN INDIAN COUNTRY

Working to Address Hazardous Waste Management Issues, from page 1



The Tribes are Key Stakeholders

In EPA's view, the Shoshone-Bannock Tribes, as key stakeholders in EPA's negotiations regarding the LDR facility, are maintaining a meaningful voice in the decision-making process. In fact, at an April 10, 2000, meeting between the Fort Hall Business Council and EPA, Elizabeth Cotsworth, Director of the Office of Solid Waste (OSW), addressed the Council and said that "as a result of the Tribes' hard work to focus EPA's attention on these issues, the Tribes now play a stronger role in how EPA regulates the facility. It is clear that the Tribes have a significant stake in what happens at the facility. The Tribes should have a meaningful and ongoing role in decisions that impact management and oversight of the facility, and should be able to influence decision-making activities regarding FMC. OSW recognizes that the Shoshone-Bannock Tribes are a government with legitimate powers to regulate their community."

In accordance with this view, EPA awarded the Tribes a grant for hazardous waste management program assistance. The goal of the grant is to build the Tribes' Hazardous Waste Management Program capacity through resource allocation for technical expertise. The objectives of the program include assuring that the hazardous waste treatment plant at the facility addresses Tribal concerns and gathering data to assess impacts from releases on the Fort Hall Indian Reservation.

Considering the history of waste management violations at the facility, the Shoshone-Bannock Tribes remain concerned about current and future waste management activities at the facility – namely, the facility's continued placement of hazardous waste in the surface impoundments during the CBC extension period. The Tribes also object to the Consent Decree because it allows the facility to come into RCRA compliance over a period of several years and because it does not dictate that all the ponds must be excavated at closure, specify waste treatment methods, or address a broader range of air pollution reduction projects beyond those specified in the Consent Decree.

While the Tribes were offered the opportunity to become a formal party to the Consent Decree, the Fort Hall Business Council (representing the Tribes) declined to sign the Consent Decree and passed a Resolution opposing it. Next, in 1999, the Tribes filed an appeal of the Consent Decree (Appeal No. 99-35821) in the United States Court of Appeals for the Ninth Circuit. In the appeal, the Tribes' contend that the United States breached its trust responsibility to the Tribes in agreeing to the Consent Decree, and that the District Court accordingly should have rejected the Consent Decree.

However, DOJ argues in its brief that the record indicates the Tribes' interests have been considered, and in many cases substantively addressed, in the Consent Decree resolving Federal RCRA violations at the facility. DOJ also argues that the District Court, which accepted the Consent Decree, properly ruled that the United States met its trust responsibility to the Tribes in this case because the government consulted with the Tribes throughout the negotiations and accommodated their requests whenever possible in setting the terms of the final settlement.

On October 5, 2000, the Ninth Circuit Court of Appeals issued an order denying the Tribes' request to review the District Court's acceptance of the Consent Decree. The Tribes have since appealed the order of the Ninth Circuit in hopes of having their case heard by the U.S. Supreme Court.

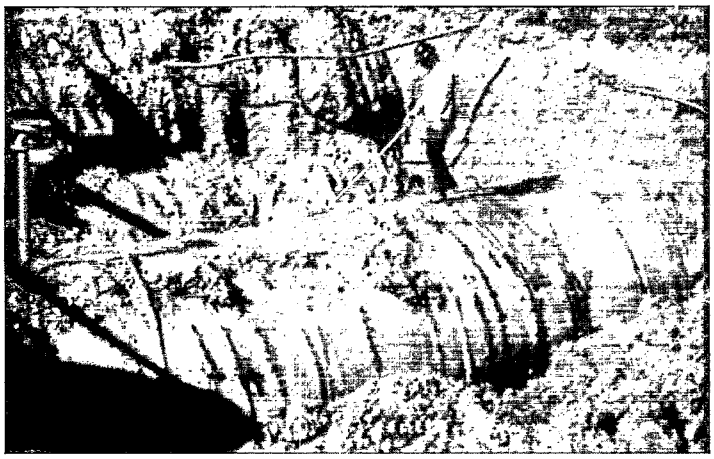
EPA to Finalize Consultation Principles

Clearly, the Tribes, EPA, and facility owners and operators each have their own opinions about the waste management issues at the facility. However, to better address the Tribes' concerns in the future and to ensure that they continue to have a meaningful voice in decision-making activities, EPA is finalizing its consultation efforts with the Tribes. This effort includes the development of new consultation principles by EPA and the Tribes. Once finalized, the consultation principles will be embodied in a Memorandum of Understanding (MOU) between EPA and the Tribes. The MOU will guide the decision-making process as the facility implements the Consent Decree and requests a renewal of the one year CBC extension.

For more information, please contact Linda Meyer, EPA Region 10, at (206) 553-6636. ✷

Cooperative Agreement Between Pueblo of Laguna and New Mexico Forges UST Partnership

On June 21, 2000, the New Mexico Environment Department (NMED) and the Pueblo of Laguna (Pueblo), through its Environmental Department (Department), signed a cooperative agreement to jointly address a leaking Underground Storage Tank (UST) site, with an estimated remediation cost of over $1 million. The agreement addresses two areas of concern: 1) a long-standing, private non-Indian owned convenience store with leaking USTs located on reservation land; and 2) an adjacent, non-reservation property potentially containing additional sources of hydrocarbon releases that may be commingling with the contamination from the USTs. The key aspects of the agreement include: 1) joint administration and enforcement, which allows preservation of Tribal jurisdiction; 2) reimbursement for eligible costs; and 3) technical assistance from the State in developing a Tribal UST program.



An underground storage tank undergoing removal.

There are several advantages to using cooperative agreements to address cleanup of leaking USTs. One very positive aspect, according to Dan Rey-Bear, legal representative of the Pueblo, is that the "Tribe retains sovereignty." The agreement achieves this mainly in two ways. First, Rey-Bear notes, it typically provides for less State administrative oversight than other types of approaches, such as a joint powers agreement. Second, it provides for joint enforcement and administration of site activities, such as inspections, permitting, corrective action, and legal action pursuant to State and Federal law as well as future State, Tribal, and Federal laws that may be enacted. For example, the agreement states that "while this agreement is in effect, the NMED and the Department shall jointly pursue enforcement actions for violations of Federal, Tribal, or State laws and/or regulations concerning UST sites at Laguna Mart and adjacent source properties."

Joint enforcement is very important at this site due to its associated jurisdictional issues. For instance, the agreement deals with contamination on reservation land caused by a non-Indian business, and potential contamination from adjacent non-reservation land. Because the contamination occurs near the jurisdictional boundary line between the Tribes and the State, the agreement recognizes that it is "highly likely that releases of pollutants in either jurisdiction will affect the other..." As a result, the agreement creates a State-Tribal partnership to prevent contamination and restore resources in either jurisdiction.

The cooperative agreement is also a tool that helps secure payment for corrective action. Seeking out potentially responsible parties and attempting to recover funds can be a lengthy, costly, and often fruitless endeavor. Consequently, the cooperative agreement contains language that ensures reimbursement from the State's Corrective Action Fund (the Fund) provided certain criteria are met.

The agreement states that, "the owners and operators of UST sites located at the Laguna Mart and adjacent source properties shall be eligible...to apply to NMED for and receive from the [Fund] reimbursement for eligible costs of approved corrective actions, including investigation, monitoring, and remediation, under the same terms and conditions as owners and operators of USTs located within the State's jurisdiction." The reimbursement criteria are as follows: 1) the owner/operator provides proof that he/she has paid all required UST fees; 2) NMED issues a written compliance determination that the owner/operator of the relevant UST site is eligible to use the Fund; 3) the owner/operator satisfies Fund requirements and provides any required information to both parties; 4) the owner/operator complies with the general requirements of the Fund; and 5) the owner/operator allows joint access within normal business hours for inspections, evaluations, and observations.

Another important benefit of cooperative agreements is that they help

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Jicarilla Apache Tribe and New Mexico Sign Cooperative Agreement on Underground Storage Tanks

The Jicarilla Apache Tribe signed a cooperative agreement with the State of New Mexico, on June 15, 2000, to address two leaking Underground Storage Tank (UST) sites left by prior owners with an estimated remediation and cleanup cost of $50,000 to $100,000. The agreement covers land at the Lodge at Chama (Lodge), located outside of the Tribal boundary, but owned by the Tribe pending trust acquisition. Specifically, the agreement provides for joint regulatory authority for USTs between the Tribe and State. The joint authority includes administration and enforcement, collaboration and training, and reimbursement from the corrective action fund (Fund). This agreement provides an effective working partnership to combat the pervasive UST problem that occurs in New Mexico's Indian Country.

Leaking USTs are a Major Issue

USTs are the primary method of fuel storage for gasoline service stations. The EPA estimates there are about 720,000 Federally-regulated USTs buried at approximately 280,000 sites nationwide. Experts familiar with Leaking Underground Storage Tanks (LUSTs) in New Mexico's Indian Country agree they are a major concern. Cost estimates can vary depending on site-specific conditions but are generally in the range of $10,000 for small cleanups and range from $100,000 to over $1,000,000 where corrective action is needed to address groundwater contamination.

Benefits of the Agreement

According to Dan Rey-Bear, legal representative for the Jicarilla Apache Tribe, there are at least four reasons that such cooperative agreements can be advantageous to Tribes: 1) avoiding jurisdictional issues (e.g., litigation costs and associated delays); 2) securing payment for corrective action; 3) developing Tribal regulatory programs through capacity-building relevant to Tribal needs; and 4) developing cooperative relationships in order to deal with issues constructively and avoid litigation.

Program capacity issues have challenged many jurisdictions faced with UST issues. While the Tribal regulatory program is one of the oldest in the region, they currently have no UST program. The cooperative agreement has provisions that attempt to meet this challenge by offering technical assistance and training.

Under the terms of the agreement, the Tribe's Environmental Protection Office, that has the requisite technical background, will attend 10 hours of workshops, seminars, and conferences a year offered or recommended by EPA or New Mexico's Environment Department. The courses will include UST regulation, installation, operation, removal, corrective action, and/or Corrective Action Trust Fund reimbursement. Such training can help Tribes develop the capacity relevant to specific Tribal needs.

The agreement, which remains in effect until completion of corrective action at the Lodge, provides for joint administration and enforcement. In addition, the agreement emphasizes full cooperation, assistance, and consultation between the State and Tribe. This partnership will help address a major challenge, and if successful, is an effective approach to a common issue on Tribal lands today. ✪

Pueblo of Laguna, from page 7

Tribes develop their regulatory programs and build capacity to meet specific needs. The agreement encourages the Tribe to use the NMED for technical assistance: "...NMED possesses technical expertise in environmental management of USTs and remediation of pollutants, and the Pueblo desires the assistance of NMED in developing the Department's capacity regarding those matters through cooperative efforts concerning UST regulation." Put simply, these terms require the State to assist the Pueblo, should it so desire the assistance, in developing its UST management and remediation program. To further assist the Tribe with technical issues (outside the cooperative agreement), a cooperative relationship between the Laguna and the All Indian Pueblo Council's Pueblo Office of Environmental Protection (POEP) was established. The agreement also requires the Pueblo to identify a qualified UST coordinator with appropriate technical background or experience and provides training for that individual in the form of workshops, seminars, conferences, and/or other formal training sessions. The UST coordinator must take 10 hours of such seminars a year that are offered or recommended by EPA or NMED.

Cooperative agreements between States and Tribes are an effective tool to facilitate State involvement in cleanup while still respecting Tribal sovereignty. They go a long way in addressing and securing the basic objective of cleaning up leaking USTs on Tribal lands while helping Tribes avoid litigation costs and associated delays. Cooperative agreements help alleviate tensions associated with jurisdictional issues and the result is a collaborative approach to address this common environmental problem in Indian Country. ✳

For additional information on these agreements, please contact:
Dan Rey-Bear, of Nordhaus, Halton, et al.,
at (505) 243-4275 or dreybear@nordhauslaw.com.

Gila River Indian Community Waste Team's Integrated Waste Management Approach

Under an integrated waste management approach, the Gila River Indian Community Department of Environmental Quality (DEQ) developed a highly effective "Waste Team" concept for addressing waste and emergency response issues. While specific program activities are often conducted by various components of the team, team members share information, expertise, and work together on a wide range of activities. These activities encompass the following five areas:

- community outreach and education;
- chemical emergency response;
- hazardous waste management;
- solid waste management; and
- underground storage tank management.

Each of these areas is discussed briefly below.

Community Outreach and Education

One of the most important aspects of the Integrated Waste Management Program at the Gila River Indian Community (GRIC) is outreach and education. All Waste Team members are involved in these activities, including: 1) attending community meetings held in seven districts; 2) visiting and partnering with schools; 3) visiting elderly citizens to explain program activities; 4) contributing articles to the Gila River Indian News (GRIN) bi-weekly newspaper; and 5) presenting quarterly and ad hoc reports to the Natural Resources Standing Committee of the Tribal Council.

Chemical Emergency Response

Several sources of potential chemical emergencies confront the GRIC. These sources include numerous facilities within the Community and major transportation routes such as Interstate 10 and the Riggs Road corridor between Phoenix and Casa Grande. The Community has made Chemical Emergency Response Preparedness a high priority and established a Tribal Emergency Response Commission in the early 1990s. Since the establishment of the DEQ in 1995 and the awarding of an EPA Chemical Emergency Preparedness and Prevention Tribal Assistance Grant (CEPPO-TAG) (used to create a full-time Emergency Planning and Community Right-to Know Act (EPCRA) coordinator position), the newly named Chemical-Tribal Emergency Response Commission (C-TERC) has been a successful and active element in Community chemical preparedness.

Over the past two years the C-TERC confirmed a protocol for chemical emergency incident response developed by the DEQ, the fire department, and emergency management officials. This protocol proved to be exceptionally effective in a range of chemical emergencies including an off – Community spill involving nitric acid in 1999. This major incident involving several jurisdictions and over 600 evacuees, including over 300 Community members. The C-TERC has also responded to fires and chemical releases at facilities in the Community's industrial parks.

RCRA Subtitle C Hazardous Waste Management

GRIC is experiencing profound growth both internally and on its borders. In addition, with financial resources available through gaming and other enterprises, the Community and three industrial parks are continually approached by businesses and industries that would like to use sites within the Community. An assessment completed by DEQ identified: seven large quantity generators (LQG); six small quantity generators (SQG); one treatment, storage, and disposal facility; 47 used oil generators; and 37 facilities categorized as conditionally exempt small quantity generators (CE-SQG). It is anticipated that the number of RCRA hazardous waste facilities will increase significantly in the future.

As part of DEQ's efforts to build Hazardous Waste Program capacity, it took measures to develop a Hazardous Waste/Corrective Action ordinance. The ordinance will transcend hazardous waste by including hazardous materials. DEQ believes this approach will reduce some of the enforcement concerns associated with Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Underground Storage Tank (UST) issues. Another approach to reducing some of the enforcement concerns is the removal of certain exceptions and exemptions from the definition of solid waste and hazardous waste. DEQ is also contemplating not allowing certain classes of facilities to operate on Community land and making CE-SQG requirements more stringent than the Federal requirements in 40 CFR Section 261.5. Examples include:

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Gila River Indian Community "Waste Team" Integrated Waste Management Approach, from page 9

not allowing hazardous waste transfer stations on Community land; considering waste associated with mining operations as hazardous waste if the waste exhibits the toxicity characteristic based on the Toxicity Characteristic Leaching Procedure (TCLP) standards; and not allowing recycling of wastes originating off-site, except at permitted treatment, storage, and disposal facilities (TSDFs). DEQ staff are currently reviewing the applicable regulations in 40 CFR and are compiling a list of changes that may be incorporated into the ordinance. Notwithstanding that public law precludes RCRA programs from being delegated to Tribes, the GRIC ordinance will meet delegation requirements.

RCRA Subtitle D
Solid Waste Management

The growth of the Phoenix metropolitan area on the Community's northern boundary has resulted in accelerated illegal dumping activities along that boundary. There is also residual surface debris from dumping that occurred within the Community prior to the establishment of scheduled trash and garbage pickup. Through its Community outreach, and with direction from the GRIC Administration and Council, the DEQ made solid waste cleanup a high priority.

The DEQ initiated a Cleanup Campaign in 1998, which pulled together departmental cleanup and enforcement activities. The Department of Public Works, with support from the DEQ, developed a "beautification program" for the entire Community that is intended to start the process of cleaning up certain problem areas. As a start, Public Works developed a bulk pick-up program for the Community. Residents can now call Public Works and schedule a truck to pick-up large items that do not fit in trash bins. The DEQ Waste Team and Cleanup Campaign supports and works in conjunction with the beautification program. The DEQ Waste Team includes personnel funded by the initiative and complementary department personnel. The Team developed an initial five-year cleanup schedule to remove all historic debris, cleanup the boundary areas, and substantially reduce the incidents of continued dumping, especially at the boundary. The DEQ inventoried and assessed dumping areas and prioritized them for cleanup.

Based on the success of current Cleanup Campaign activities, the initial five-year schedule has been reduced to a three-year time-frame. As part of the Cleanup Campaign, the Waste Team coordinates cleanups with other Community programs and with adjacent local governments and industry.

RCRA Subtitle I Underground
Storage Tank Management

All USTs in the Community including Tribal, private, and Federal USTs are in full compliance with the EPA, December 22, 1998, deadline. Because existing lists were old and incomplete, the GRIC DEQ staff spent considerable time researching all the UST sites within the Community. Staff interviewed knowledgeable individuals to pin down the location of a number of sites identified through previous outreach efforts. In two cases, the DEQ had to hire a UST locator firm to pinpoint the exact location of USTs. In addition, DEQ staff spent considerable time researching old BIA lease records at the Pima Agency Realty Office in an attempt to determine the operators of many of these old UST sites. This research led to a cost recovery in at least one case.

Prior to removal work, DEQ personnel conducted research regarding UST removal contractors' cost and work performance. A total of 32 USTs have been removed. DEQ provided or procured funding for 20 of the USTs and four site characterizations. Costs for removal averaged approximately $2,000 per tank. This is far below the $5,000 to $10,000 that it usually costs to remove a tank. The significantly reduced costs enabled the Community and other entities to remove the USTs and become one of the few jurisdictions in the country to meet the EPA, December 22, 1998, deadline.

GRIC DEQ conducted preliminary characterizations at all sites with indications of contamination during the removal process. Eleven USTs had documented soil contamination. Of those USTs, three had indications of groundwater contamination. For the eight USTs with only soil contamination, the contaminated soil was removed under DEQ oversight. During soil removal, DEQ conducted sampling to ensure levels of contamination were protective of human health and will preclude subsequent groundwater contamination. DEQ kept EPA Region IX UST personnel apprised of the work and approved the remedial work. USTs with preliminary indications of groundwater contamination will be further characterized to determine the lateral and vertical extent of groundwater contamination. Soil removal and remediation planning to remove sources of groundwater contamination is in the preliminary stage. A phased approach for characterization of the groundwater contamination is also in the preliminary stage. ✳

Tribal Perspectives on RCRA National Meeting

State, Tribal, and Federal regulators convened, along with public and private stakeholders, for a meeting on the Resource Conservation and Recovery Act (RCRA). This "National RCRA Program Meeting" was held at the Hyatt Regency Capitol Hill Hotel in Washington, DC on August 15-18, 2000. There were over 800 registered parties at the meeting -- by far the largest National Meeting yet. The meeting included two plenary sessions and 77 breakout sessions. Compared to the last meeting, there were significantly more sessions. An added feature this year was the "meet the speaker" poster sessions. Also, there was an Environmental Indicators Forum, opened to public interest and private sector participants.

Significantly, Tribal issues were on the agenda, starting with the opening plenary session.

The plenary session included a presentation by Marcie Phillips, Environmental Manager of the Shoshone-Paiute Tribes of Duck Valley and Vice Chair of the Tribal Association on Solid Waste & Emergency Response (TASWER), who addressed conference attendees during the opening plenary session. "Tribes are many years behind States in the development of RCRA programs, but we confront very serious waste management challenges," she said. Ms. Phillips also stated that, "EPA is now working with Tribes to support our efforts." A Tribal member from Alaska was enthusiastic about Ms. Phillips' remarks, especially since she raised issues facing Alaskan Natives. This is especially important, it was noted, because there are major open dump issues that Alaskans want to tackle. Tribal land in Alaska has a different status than that in the lower 48 states - making it more difficult to obtain funding to address these challenges.

Another participant said that it is important for the Tribes and Tribal organizations to be informed about State and Federal RCRA policy. For example, Rebecca Ware, Environmental Director for the Delaware Nation of Oklahoma, stated that, "as TASWER begins to express its concerns as a unified group, it is imperative that as many Tribes as possible be informed about current RCRA policy and procedures. This conference provided the format for Tribal personnel to understand the national trends. It gave the regular RCRA conference attendees an opportunity to understand some of the problems Tribes encounter in their solid waste management programs."

A wide choice of breakout sessions gave everyone a chance to listen to their area of interest interspersed with "a brimming basketful of new ideas," according to Ware. The EPA Office of Solid Waste (OSW) Tribal Waste Management Program held two sessions during the meeting -- one on the Interagency Open Dump Workgroup and one on the Tribal Hazardous Waste Management Program. The Interagency Open Dump Workgroup session featured speakers from several Federal agencies participating in an effort to close open dumps in Indian Country. In fiscal year (FY) 1999, the interagency effort funded 11 projects totaling $1.6 million. In FY 2000, $2.4 million in funding went to seven new projects while four of the FY 1999 projects received additional funds. Federal agency representatives made a commitment to continue working together and helping Tribes address the problems associated with open dumping on Indian land. (Please refer to the "Federal Agencies Unite" article on page one for more information on this interagency effort.)

The Tribal Hazardous Waste Management Program session featured a presentation by Dan Marsin, the Hazardous Waste Program Manager for the Gila River Indian Community (GRIC). Mr. Marsin described the extensive hazardous waste management challenges for the GRIC Department of Environmental Quality and how EPA grants support Community efforts to improve waste management. The GRIC is in the final stage of a three year "Integrated Waste Management" grant funded by EPA's OSWER. The session also provided attendees an overview of the Tribal Hazardous Waste Management Grant Program. This program, managed by EPA's Office of Solid Waste, provides $300,000 each year for grants to Tribes facing hazardous waste management challenges. Funding went to three projects in FY 1999 and four in FY 2000.

Attendance at these sessions exceeded all expectations and resulted in a "standing room only" situation. Beyond the opportunity to obtain critical substantive knowledge of the programs, participants had many valuable opportunities to engage and network with their Federal and State counterparts. Ware emphasized that, "interagency cooperation is the only way we can continue to address RCRA problems." Moreover, she believes that the networking that developed during the conference will be "an invaluable tool as we seek to control the Garbage Gremlin" on Tribal lands.

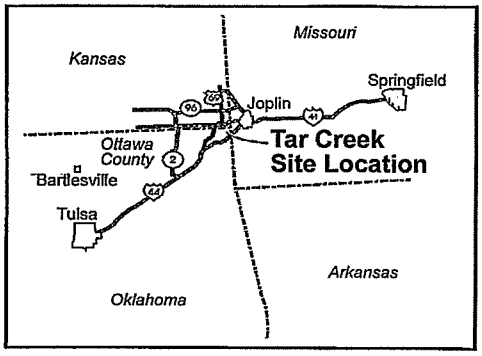
EPA's Office of Solid Waste is looking forward to Tribal participation at future RCRA National Meetings. For further information contact Luke Jones, EPA Headquarters at (703) 605-0728. ✷

TASWER Holds Second Annual Conference

The Tribal Association on Solid Waste and Emergency Response (TASWER) held its 2nd Annual Conference in Miami, Oklahoma, home of the Tar Creek Superfund Site. This event was hosted by the Quapaw and Miami Tribes of Oklahoma.

Laura Weber, Chair of the TASWER Board of Directors noted that, "It is important for our members to come together and see different examples of environmental devastation." Attendees were able to visit the Tar Creek Superfund Site first hand and learn about emergency response issues facing Indian Country and Alaskan Native Villages.

The keynote speaker of the event was Mr. Michael Shapiro, Deputy Assistant Administrator of EPA's Office of Solid Waste and Emergency Response (OSWER). Mr. Shapiro expressed his dedication to Indian Country and Alaskan Native Village environmental issues and his excitement about the future partnerships that will occur between Tribes and the EPA.



Attendees were charged with selecting new members to staff the Board of Directors, as well a new officers.

For more information, please visit TASWER's web-site at: http://www.taswer.org.

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Native American Network is published by the U.S. Environmental Protection Agency, Office of Solid Waste. The views expressed in *Native American Network* are those of the authors, and do not necessarily reflect or represent EPA policy. Providing Tribes with information about OSWER programs and related activities is the purpose of the *Native American Network*. Contact us with your ideas for future articles, or submit your own articles for publication.

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Washington, D.C. 20460

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