

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: ED/GC

To: Miller, FSME

AUTHOR: Scott Canty

AFFILIATION: AZ

ADDRESSEE: Eric Holder

SUBJECT: Notice of endangerment and intent to sue concerning Tuba City open dump

cys: EDO
DEDMRT
DEDR
DEDCM
AO
OGC
OCAA
Rivera

ACTION: Information

DISTRIBUTION: OGC, RF

LETTER DATE: 05/21/2009

ACKNOWLEDGED: No

SPECIAL HANDLING:

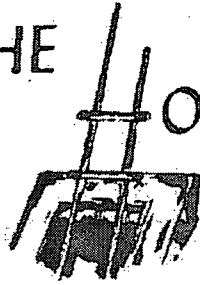
NOTES:

FILE LOCATION: ADAMS

DATE DUE:

DATE SIGNED:

THE HOPI TRIBE



May 21, 2009

VIA REGISTERED MAIL, RETURN RECEIPT REQUESTED

The Honorable Eric Holder
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
USEPA Ariel Rios Building (AR)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

The Honorable Laura Yoshii
Acting Regional Administrator
United States Environmental Protection Agency
Region 9
Office of the Regional Administrator
75 Hawthorne Street
San Francisco, CA 94105

The Honorable Patrick J. Cunningham
Acting Director
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Other Parties Listed in Attachment A

Re: Notice of Endangerment and Intent to Sue Concerning Tuba City Open
Dump

Dear Recipients:

Pursuant to Section 7002(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b), and related regulations at 40 C.F.R. Pt. 254, this letter serves as notice that the Hopi Tribe intends to commence a civil action asserting claims under RCRA against some or all of the following parties:

The United States of America
The United States Department of Energy
The United States Nuclear Regulatory Commission
The United States Department of Interior
The Bureau of Indian Affairs
The United States Department of Health and Human Services
The Indian Health Service
The United States Department of Defense
The United States Environmental Protection Agency
El Paso Natural Gas Company

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This civil action will focus on the ongoing pollution, environmental damage, and imminent and substantial endangerment to public health and the environment caused by operation of the Rare Metals Uranium Mill facility located approximately five miles northeast of Tuba City, Arizona and the operation and condition of the Tuba City Open Dump ("Open Dump") located approximately one mile east of the Hopi Villages of Upper and Lower Moenkopi, Arizona.

The Rare Metals Uranium Mill operated from 1956 to 1966 and was located just three miles northeast of the Open Dump on property belonging to the Navajo Nation. The mill was operated by El Paso Natural Gas and its predecessor, Rare Metals of America, under contract with the Atomic Energy Commission and processed uranium solely to support the government's Cold War efforts. During that ten-year period, approximately 800,000 tons of uranium ore was processed. The Rare Metals Uranium Mill is part of the Cold War "legacy" of past uranium mining and processing that blankets much of this area of Arizona. Part and parcel of this "legacy" is the widespread soil and groundwater contamination caused by these government operations -- the Rare Metals Uranium Mill is no exception and groundwater at that site is contaminated with nitrate, sulfate, total dissolved solids, and uranium at concentrations in excess of standards. The Rare Metals Uranium Mill has been designated a Uranium Mill Tailings Radiation Control Act ("UMTRCA") processing site. The Department of Energy is responsible for remediation of the site and currently operates a groundwater remediation system there.

The 30-acre Open Dump is located almost entirely on Hopi Tribal lands with approximately 2 acres located on Navajo Nation lands. The Bureau of Indian Affairs built the Open Dump in the 1950s and operated it until it was closed for further disposal in 1997. The Open Dump is unlined and lies directly on top of and in some areas extends below the surface of the geologic water-bearing formation known as the "N-Aquifer," the Hopi Tribe's most vital water resource and an indispensable part of its cultural heritage. Waste trenches at the Open Dump are in direct contact with the N-Aquifer water table at a depth of only 10 feet below ground surface. Rainfall and resulting surface-water flows percolate through the Open Dump and into the N-Aquifer, accumulating contaminants in the process. Wastes of all kind were randomly dumped on the ground surface and in the large trenches that BIA excavated. BIA mostly "operated" the dump through inaction, with little active management. There were no restrictions and no monitoring on who used the dump, what could be dumped, or how it was dumped. The dump was constantly on fire. Commercial and medical wastes generated by various federal agencies located over a wide geographic area were dumped there. Moreover, evidence demonstrates that uranium and other radioactive wastes from the nearby Rare Metals Uranium Mill were also dumped at the Open Dump.

The Hopi Villages of Upper and Lower Moenkopi rely exclusively on the N-aquifer for their limited drinking water supplies. The N-aquifer is a unique cultural resource for the Hopi Tribe and also feeds several springs in the area used for irrigation of family subsistence farms. Three N-aquifer water supply wells located approximately 4,000 feet west of the Open Dump

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provide water for the public water supply system that serves the Upper Village. The Lower Village obtains water from two springs located approximately 7,000 feet southwest of the Open Dump, one of which feeds a public water supply distribution system in the Lower Village.

As legally required, BIA planned for closure of the Open Dump between 1993 and 1997. However, in response to BIA's failure to adequately plan for cleanup and closure of the Open Dump, the Hopi Tribe supported efforts to conduct a thorough site investigation addressing the entire Open Dump, including groundwater contamination. These efforts and those of the Navajo Nation have revealed significant contamination of the N-aquifer located adjacent to and in the vicinity of the Open Dump. Groundwater sampling and analyses show contaminant concentrations that exceed--in some cases by as much as 10 times-- the U.S. Environmental Protection Agency maximum contamination levels ("MCLs") for safe drinking water for the following constituents: uranium, arsenic, chromium, nitrate, selenium, and radium-226/228. Groundwater sampling conducted by the Hopi Tribe's consultant identified a contaminant plume in the N-aquifer resulting from dump leachate. This plume includes uranium and elevated levels of other inorganic contaminants. The groundwater contaminant plume has migrated over 4,000 feet downgradient from the Open Dump, where groundwater exceeding the uranium MCL is now within 2,500 feet of the village spring and supply wells and poses an imminent and substantial endangerment to public health and the environment. As the Hopi Villages rely exclusively on the N-aquifer for drinking water, prompt closure of the Open Dump and proper remediation of the contaminated groundwater is of paramount importance.

The Hopi Tribe, along with the Navajo Nation, have been working with BIA, EPA, and other offices of the federal government for almost twelve years to find an acceptable method for closing the Open Dump and addressing its attendant risks. After more than a decade, the Open Dump has still not been properly closed and the attendant risks remain and have spread and grown. While the Hopi Tribe remains willing to continue to work with the federal agencies on this closure process, in view of the pending litigation related to the Open Dump and other changed circumstances, the Hopi Tribe is sending this notification to ensure that it will be in a position to protect the interests of the Tribe and its members.

Based on available information, the Hopi Tribe believes and will allege that the above-listed parties owned or operated the Open Dump, and have handled, managed, treated, stored, disposed of, or transported solid or hazardous waste at the Tuba City Open Dump, without a permit or interim status as required by Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and 40 C.F.R. § 270.1(c), or otherwise in violation of Subtitle C of RCRA, 42 U.S.C. § 6922, 6924, 6925, 6930 & 6937, and regulations promulgated thereunder, including but not limited to the Part 262 generator requirements, 40 C.F.R. Part 262, the Part 270 permit requirements, 40 C.F.R. Part 270, the Part 265 interim status TSD requirements (including but not limited to the

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requirement to implement a ground water monitoring program pursuant to 40 C.F.R. § 265, Subpart F.), 40 C.F.R. Part 265, the Part 264 TSD requirements, 40 C.F.R. Part 264, and the Part 268 land disposal requirements, 40 C.F.R. Part 268, and in violation of Subtitle D of RCRA, including the open dumping requirements set forth at Section 4005(a) of RCRA, 42 U.S.C. § 6945(a) and the regulations applicable to municipal solid waste landfills, 40 C.F.R. Part 258. These violations are continuing and remain unabated.

The Hopi Tribe further intends to allege that residually radioactive materials, including but not limited to yellowcake, mill tailings containing uranium, radon, molybdenum, selenium, nitrate, sulfuric acid or other hazardous wastes, ceramic mill balls, cables and other mill equipment (the "Mill Waste"), and other solid and hazardous wastes, have been stored or disposed of in drums or containers or directly on the ground at the Tuba City Open Dump and that these wastes have discharged, spilled and leaked, and continue to discharge, spill and leak, into the soil and ground water at the Tuba City Open Dump.

The Hopi Tribe further intends to allege that the above-stated parties have periodically and continuously handled, managed, generated, treated, stored, disposed of, transported or engaged in open dumping of the Mill Waste and other solid and hazardous waste, including mill tailings, soil, ground water, equipment and other mill-related waste, each containing uranium, radon, molybdenum, selenium or nitrate or sulfuric acid, at the Tuba City Open Dump.

The Hopi Tribe further intends to allege that during the period from the 1950s through the present the Department of Health and Human Services and/or the Indian Health Service have disposed of medical waste and other solid and hazardous waste at the Tuba City Open Dump.

The Hopi Tribe further intends to allege, among other things, that the parties listed above have owned or operated the Tuba City Open Dump from the 1950s through the present, but have not listed or identified the Open Dump as a federal facility treating, storing or disposing of hazardous waste, and have not performed annual inspections of the Open Dump to ensure compliance with Subtitle C of RCRA and have not operated, monitored, permitted or closed the Open Dump in compliance with Subtitle D of RCRA.

The Hopi Tribe further intends to allege that the above-listed parties' past or present handling, storage, treatment, transportation, or disposal of solid or hazardous waste at the Tuba City Open Dump may present an imminent and substantial endangerment to health or the environment.

The Hopi Tribe further intends to allege that the Mill Waste, medical waste and other solid and hazardous waste which have been disposed of and are currently lying exposed on the surface of the Tuba City Open Dump and other properties have impacted groundwater underneath these properties, including groundwater which may be used for drinking water,

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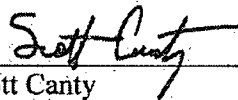
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during the period from the 1950s through the present, and that the impacts to groundwater caused by this disposal of Mill Waste, medical waste and other solid and hazardous waste are continuing, and that plumes containing contaminants from Mill Waste, medical waste and other solid and hazardous waste continue to emanate from the Open Dump.

The Hopi Tribe will seek appropriate interim and final closure and remedial action at the Tuba City Open Dump, including the clean closure of the Open Dump through the removal and off-site disposal of all wastes now found at the Open Dump, and additional remedial activities to protect groundwater resources. In addition to asserting claims under RCRA, the Hopi Tribe may assert claims under other laws of the United States and under the laws of the Hopi Tribe.

The Hopi Tribe may be reached by and through its counsel in this matter, Joel Gross and Rebecca Green, of Arnold & Porter LLP, at 555 Twelfth Street, N.W., Washington, DC, 2004 or 202.942.5705 and 202.942.6094, respectively.

Sincerely,



Scott Canty
General Counsel
The Hopi Tribe

Attachment A

The Honorable Dr. Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

The Honorable Gregory B. Jaczko
Chairman
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Assistant Secretary
Bureau of Indian Affairs
U.S. Department of the Interior
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Washington, D.C. 20240

The Honorable Jerry Gidner
Director
Bureau of Indian Affairs
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Washington, D.C. 20240

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

The Honorable Yvette Roubideaux
Director
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Rockville, MD 20852-1627

The Honorable Robert Gates
Secretary
U.S. Department of Defense
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Ms. Amanda Stone
Waste Programs Division Director
Arizona Department of Environmental Quality
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