



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8SEM-EMR

ACTION MEMORANDUM

SUBJECT: Approval and Funding for a Removal Action at the Lodge Grass Drums Site in Big Horn County, Montana, pursuant to the On-Scene Coordinator's delegated authority under CERCLA Section 104

FROM: Craig Myers
Federal On-Scene Coordinator

THRU: Laura Williams, Chief
Emergency Response Section

Deirdre Rothery, Chief
Emergency Management Branch

TO: Betsy Smidinger, Director
Superfund and Emergency Management Division

Site ID# B863

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the removal action described herein for the Lodge Grass Drums Site (Site) in Big Horn County, Montana. This emergency response action involved the transportation and disposal of abandoned drums that may contain hazardous waste. Conditions existing at the Site presented a threat to public health or welfare or the environment and met the criteria for initiating a removal action under 40 CFR 300.415(b)(2) of the National Contingency Plan (NCP).

This removal action is considered nationally significant or precedent-setting because it involves abandoned drums in Indian Country. Per the 2009 Action Memo Guidance, Headquarters' consultation is not required, as the Site requires no further action after the initial emergency measures discussed within this document. This removal action will not establish any precedent for how future response actions will be taken and will not commit the US Environmental Protection Agency (EPA) to a course of action that could have a significant impact on future responses or resources.

II. SITE CONDITIONS AND BACKGROUND

Site Name:	Lodge Grass Drums
Superfund Site ID (SSID):	B863
NRC Case Number:	N/A
CERCLIS Number:	MTD986067338
Site Location:	Big Horn County, Montana
Lat/Long:	45.305631/-107.359759
Potentially Responsible Party (PRP):	
NPL Status:	Non NPL
Removal Start Date:	2/22/2021

A. Site Description

1. Removal Site Evaluation

The Site was referred to the response program by the US EPA Region 8 Resource Conservation and Recovery Act (RCRA) Program. Regional RCRA staff worked with the Crow Tribe Environmental staff and property owner to get the drums properly disposed of. However, at the time of the referral in July of 2020, it became apparent that the disposition of the drums would not change absent action from the EPA's Superfund Response program.

RCRA reports indicate that there are approximately 20 drums in varying states of decay situated approximately 500 feet from the banks of the Little Bighorn River. The property owner stated that the drums contain only waste oil; however, the label and drum marking information available indicates that the drums once held much more flammable methanol-based racing fuel. Additionally, some of the drums appear to be bulging, which would not necessarily be true of drums containing only waste motor oil. Lastly, there is dark/black soil staining present around the drums, indicating some level of leakage/spillage/release.

2. Physical Location

The drums are located on a parcel of property in Big Horn County, Montana. The property is located just outside the town of Lodge Grass, Montana on the I-90 Frontage Road, and is within the boundary of the Crow Reservation. The property is on the left descending bank of the Little Bighorn River approximately 19 miles upstream of the water intakes for the Crow Agency and Bureau of Indian Affairs (BIA) Drinking Water Treatment Plants. Lodge Grass, population 428, is located within 1 mile of the property, and the combined downstream treatment plants serve a population of approximately 1,800 people, of which approximately 95% are Native Americans.

3. Site Characteristics

The Site consists of the property near Lodge Grass, Montana where the drums have been abandoned, the Montana Department of Transportation (DOT) yard in Hardin, MT, as well as any roads necessary to transport properly packaged waste between the two. The property also contains an abandoned residential structure. The property is

heavily treed and is in or very near to the Little Big Horn flood plain. The Montana DOT yard is included in the Site to allow secure storage of the drums and other waste prior to off-Site disposal.

Lodge Grass is classified as a “cold semi-arid climate” according to the Köppen Climate Classification system. Cold semi-arid climates at higher latitudes tend to have dry winters and wetter summers, while cold semi-arid climates at lower latitudes tend to have precipitation patterns more akin to subtropical climates, with dry summers, relatively wet winters, and even wetter springs and autumns.

4. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant, or Contaminant

According to the Agency for Toxic Substances and Disease Registry (ATSDR), lead, cadmium, copper, chromium, arsenic, zinc, barium, boron, manganese, tin, and polyaromatic hydrocarbons are all common contaminants in waste motor oil. All are listed hazardous substances under CERCLA. Additionally, given the alleged source of this material, it is certainly possible that automotive cleaners containing chlorinated and/or other flammable solvents have been mixed into the waste.

The contaminants of concern at the Site are suspected hazardous substances and/or pollutants or contaminants. According to 40 CFR 300.415(e)(7), removal of drums that may contain hazardous substances or pollutants or contaminants, where it will reduce the likelihood of leakage, is a contemplated appropriate removal action in this situation.

5. NPL Status

This Site is neither on nor currently being considered for inclusion on the NPL.

6. Maps, Pictures, Other Geographic Representations

A map of the Site and relevant Site photos are available in Attachment 1.

B. Other Actions to Date

1. Previous Actions

The EPA’s RCRA program has been working with the Tribe since 2017 to mitigate the threats posed by this Site. However, all involved have concluded that a regulatory solution does not exist here, and that the EPA’s Removal program is the only option available to address contamination at the Site.

2. Current Actions

There are no current activities on the Site.

C. State and Local Authorities' Role

1. State and Local Actions to date

This Site is located on Tribal land, so there are no State/Local authorities to bring to bear. Tribal authorities have been unable to address the contamination.

2. Potential for Continued State/Local Response

The Tribe does not have the resources or authority to conduct this removal action, and are involved in a consultation role only.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Conditions at the Site present a threat to public health and the environment and meet the criteria for initiating a removal action under 40 CFR 300.415(b)(2) of the NCP.

EPA has considered all the factors described in 40 CFR 300.415(b)(2) of the NCP and determined that the following factors apply at the Site.

“(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;”

The RCRA referral states that the drums are located within 500’ of the Little Big Horn river, and vegetation shown in photos indicate that the drums may be within the floodplain. Any release combined with a rain event has the potential to cause the drum contents to migrate downstream. There are two drinking water intakes and water treatment works located downstream that serve the population of Crow Agency. One is operated by the Tribal government and one is operated by the BIA. The Region 8 Response Section has had multiple interactions with these facilities in the past which have shown that any unplanned disruption of these plants’ operation can cause significant hardship on the community.

“(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that pose a threat of release.”

As discussed elsewhere in this document, the drums are reported to contain waste oil, which is a regulated waste under RCRA due to assumed presence of various CERCLA hazardous substances. In addition, some of the drums are bulging, indicating an over-pressure condition either exists or has existed in the past, indicating the potential for additional volatile solvents. Many of these solvents are hazardous substances. Lastly, the actual release of the drums’ contents has also been documented – see Attachment 1.

“(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released:”

As noted above, a release of these drums’ contents combined with a significant rain event will cause the contents to migrate downstream. Additionally, the photos provided by the RCRA

program (Attachment 1) show stained soil indicating an ongoing release that will migrate further with every rain event if left unchecked.

“(viii) The availability of other appropriate federal or state mechanisms to respond to the release:”

Given that this is on a reservation, there are no state mechanisms that can be brought to bear. The EPA Region 8 RCRA program has concluded that there is no regulatory option left to address the Site. Referral to EPA’s removal program is the last resort to bring this Site under control.

IV. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

ERRS crews were on Site to assist moving any fallen timber/brush/overgrowth and/or with any drum movement required to allow the OSC and START contractor access to sample and characterize the drums. Leaking containers were overpacked in new overpack drums and bungs were replaced on any drums that had damaged/missing bungs. This mitigated any further release of drum contents. The contents of partially full drums were consolidated in other competent drums with similar waste on site or were transferred and bulked into new steel drums.

All waste was transported to the DOT lot to be secured while awaiting disposal. Additional overpack drums may be required for some of the drums in order for the transporter to accept them for shipment. The time frame and location for final disposition of the waste is not known at this time. However, waste disposition will occur in accordance with the off-site rule at an appropriate facility based on the waste determination and will be documented in the final POLREP for the Site.

2. Contribution to Remedial Performance

This effort will, to the extent practical, contribute to any future remedial effort at the Site. However, no further federal action is anticipated at this time.

3. Engineering Evaluation/Cost Analysis (EE/CA)

An EE/CA is not required for a time-critical removal action.

4. Applicable or Relevant and Appropriate Requirements (ARARs)

This Action Memorandum addresses the proposed time-critical removal action at the Lodge Grass Drums Site. Removal actions conducted under CERCLA are required, to the extent practicable considering the exigencies of the situation, to attain ARARs. In determining whether compliance with an ARAR is practicable, the lead agency may consider appropriate factors, including the urgency of the situation and the scope of the removal action to be conducted. A table containing potential Site-specific ARARs is provided as Attachment 2 to this Action Memorandum.

5. Project Schedule

This emergency response was initiated on February 22, 2021. Disposal profiling and off-Site disposal arrangements are expected to be completed by the end of April 2021.

B. Estimated Costs*

	Estimated Costs
ERRS contractor	\$ 60,000
SUBTOTAL	\$ 60,000
Contingency costs (20% of subtotal)	\$ 12,000
Total Removal Project Ceiling	\$ 72,000

*EPA direct and indirect costs, although cost recoverable, do not count toward the Removal Ceiling for this removal action. Liable parties may be held financially responsible for costs incurred by the EPA as set forth in Section 107 of CERCLA

V. **EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

A delay in action or no action at this Site would increase the actual or potential threats to the public health and/or the environment. There is evidence that the drums are leaking. Delays will increase the likelihood that leaking worsens while no action would potentially ensure that the full contents are released to the environment.

VI. **OUTSTANDING POLICY ISSUES**

This Site is located within Indian Country on the Crow Reservation, is considered nationally significant, but does not require concurrence by EPA Headquarters.

VII. **ENFORCEMENT**

An investigation to evaluate potential enforcement options will be undertaken. A separate Enforcement Addendum will be prepared if appropriate providing a confidential summary of potential enforcement activities.

VIII. **APPROVALS**

This decision document represents the selected removal action for the Lodge Grass Drums Site in Big Horn County, Montana, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site met the NCP section 300.415(b)(2) criteria for a removal action, and through this document, I am approving the proposed removal actions. The total project ceiling is \$72,000; this amount will be funded from the Regional removal allowance.

APPROVE

Craig Myers
Federal On-Scene Coordinator

Date

Attachments:

- Attachment 1: RCRA report containing Site map and photos
- Attachment 2: ARARs Table

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
RESOURCE CONSERVATION AND RECOVERY ACT

BASIC INFORMATION

Facility Name: Lodge Grass Drum Site
RCRA ID: MTR000211649

Facility Location: 45.305631, -107.359759

Notification Status: Non-notifier

Facility Contact: Donna Bends,
[REDACTED]

Date of Inspection: May 15, 2019

Arrival Time: 9:30 am

Departure Time: 10:00 am

Lead Inspector: Annette Maxwell, U.S. EPA RCRA Inspector

Type and Purpose of Inspection: Compliance Evaluation Inspection
RCRA Section 7003 Inspection

Facility Type: Abandoned drum site; Facility located on Tribal land

Applicable Regulations to Inspection: RCRA Section 7003

Inspection Type: Unannounced Inspection; EPA Inspection

General Facility and Process Description: The site includes a single-family residential structure that was not in use at the time of the inspection. In addition, a large tree blocks vehicular access to the site. A site aerial map is included in Appendix A: Site Map. Based on information obtained from the Bureau of Indian Affairs, the responsible party for the site is Ms. Donna Bends, who has identified the contents of the drums to be used oil from vehicle engines generated by a neighbor. Ms. Bends has not provided information to EPA regarding the identity of the used oil generator, but stated that the used oil was placed onto the property with her permission.

Surrounding Land Use: The site is located approximately ¼ mile south of Lodge Grass, Montana, on the Crow Reservation. The Little Bighorn River lies approximately 500 feet east of the residential structure. This river is used as a source of drinking water for the Crow Reservation, and the Lodge Grass site is upstream of the water supply intake. Land use surrounding the site is primarily agricultural. The I-90 Frontage Road (Old Highway 87) borders the property to the west.

OPENING CONFERENCE

No opening conference was conducted because no site representatives were present at the time of the inspection.

Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

TOUR INFORMATION

Areas of the facility toured: The drum storage area was located outdoors on the ground (no improved surface) approximately 80 feet northeast of the residential structure. In this area I observed 20 drums that all appeared to contain liquids. Based on the appearance of the ground including distressed vegetation and the appearance of an oily film in the area around the drums, it appeared that some level of leaking or spillage has occurred. The drums appeared in a somewhat deteriorated state, with rust on most of the drums. I observed that one drum was open (not closed at the bung hole), two with bulging tops, and none labeled with the words "Used Oil." See Appendix 2: Photo Log, photos: 1159-1183.

Inspection Logbook No.: 2019-0028 Pages: 3-4.

CLOSING CONFERENCE

No closing conference was conducted because no site representatives were present.

ADDITIONAL INFORMATION

During a prior inspection conducted on July 10, 2018, I observed the drums present at the site and in a similar condition as that observed in the May 2019 inspection. Verbal and written contact were made with Ms. Donna Bends following that inspection in an effort to ensure that the drums be appropriately managed and disposed in order to prevent releases to the environment. During an August 20, 2018 phone call, Ms. Bends identified the contents of the drums to be used oil from automotive oil changes.

After the inspection on May 15, 2019, I spoke with Crow Environmental Protection Program (CEPP) Director, Connie Howe, who expressed that CEPP shares the EPA's concern that release from the drums could affect the Crow Tribe's drinking water distribution system, because the site is upstream of the system intake on the Little Bighorn River, and that CEPP remains supportive of the EPA's efforts to address the concern.

Based on the unattended and inaccessible condition of the site and deteriorated condition of the drums, the drums are in an "abandoned" status. Abandoned used oil is a solid waste subject to regulation under RCRA, including (but not limited to) RCRA §7003.

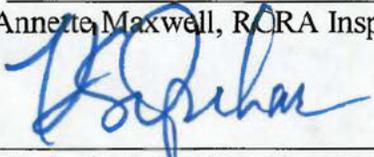
Outstanding Concerns or Deficiencies:

The unattended used oil storage and degraded container state as indicated by rust is a concern because of the potential for container failure and release to the environment. Further, the close proximity to the Little Bighorn River and the potential for a release to reach the water supply intake for the Crow Reservation is of additional concern.

Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

SIGNATURES

Lead Inspector:  Date: 5/30/2019
Annette Maxwell, RCRA Inspector

Supervisor:  Date: 6/5/2019
Kimberly S. Cpekar, Deputy Director
Enforcement and Compliance Assurance Division

APPENDICES AND ATTACHMENTS

- Appendix 1 – Site Map
- Appendix 2 – Photograph Log

Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

APPENDIX 1 – SITE MAP



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

APPENDIX 2 – PHOTOGRAPH LOG

Photographer: Annette Maxwell
Camera Model and ID: Nikon Coolpix S7000, B00227

Photo 1159, DSCN1159.jpg, 5/15/2019 9:37 am, photo of driveway leading to area where drums are located. A fallen tree blocks vehicle access to the site. Photo taken facing east.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1160, DSCN1160.jpg, 5/15/2019 9:38 am, photo of driveway beyond (east of) the fallen tree with drums visible in background.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1161, DSCN1161.jpg, 5/15/2019 9:39 am, photo of drums near eastern end of driveway.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1162, DSCN1162.jpg, 5/15/2019 9:39 am, photo of drums, showing all 20 drums. Photo taken facing north/northeast.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1163, DSCN1163.jpg, 5/15/2019 9:40 am, photo of westernmost section of drums. Photo includes two drums on their sides and one drum with a bulging top.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1164, DSCN1164.jpg, 5/15/2019 9:40 am, photo central section of drums, including two drums with bulging tops (one of which was also shown in photo 1163).



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1165, DSCN1165.jpg, 5/15/2019 9:40 am, photo of easternmost section of drums.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1166, DSCN1166.jpg, 5/15/2019 9:40 am, photo of all 20 drums, taken facing south.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1167, DSCN1167.jpg, 5/15/2019 9:41 am, photo of all 20 drums, taken facing southeast.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1168, DSCN1168.jpg, 5/15/2019 9:41 am, photo of drum labeling.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1169, DSCN1169.jpg, 5/15/2019 9:41 am, photo of stressed vegetation in between drums.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1170, DSCN1170.jpg, 5/15/2019 9:42 am, photo of all 20 drums, taken facing west. Uninhabited green residential structure and partially fallen-down additional structure included in photo background.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1171, DSCN1171.jpg, 5/15/2019 9:42 am, photo of an open drum.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1172, DSCN1172.jpg, 5/15/2019 9:42 am, photo of spilled or leaked oily-looking waste on ground on north side of drum area.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1173, DSCN1173.jpg, 5/15/2019 9:42 am, photo of spilled or leaked oily-looking waste on ground on north side of drum area



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1174, DSCN1174.jpg, 5/15/2019 9:46 am, photo of spilled or leaked oily-looking waste on ground on north side of drum area.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1175, DSCN1175.jpg, 5/15/2019 9:46 am, photo of spilled or leaked oily-looking waste on ground on north side of drum area.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1176, DSCN1176.jpg, 5/15/2019 9:46 am, photo of spilled or leaked oily-looking waste on ground on north side of drum area, facing toward lower-elevation area located approximately 15 feet to the north of the drums.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1177, DSCN1177.jpg, 5/15/2019 9:50 am, photo of all 20 drums, taken facing west.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1178, DSCN1178.jpg, 5/15/2019 9:51 am, photo of drum label.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1179, DSCN1179.jpg, 5/15/2019 9:51 am, photo of drum label.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1180, DSCN1180.jpg, 5/15/2019 9:51 am, photo of drum label.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1181, DSCN1181.jpg, 5/15/2019 9:51 am, photo of stressed vegetation.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1182, DSCN1182.jpg, 5/15/2019 9:52 am, photo of drum label.



Facility Name: Lodge Grass Drum Site
Facility Location: Lat/Long: 45.305631, -107.359759
Date of Inspection: May 15, 2019

Photo 1183, DSCN1183.jpg, 5/15/2019 9:52 am, photo of drum with no labels.



ACTION MEMORANDUM ATTACHMENT 2

Applicable or Relevant and Appropriate Regulations (ARARS) Table

Media	Requirement	Prerequisite	Citation
Characterization of hazardous waste	Must identify characteristic hazardous waste	Determine whether solid waste is hazardous based on certain characteristics. Applicable.	40 C.F.R. § 261.10
Characterization of hazardous waste	Must determine if solid waste is hazardous waste or if waste is excluded under 40 C.F.R. § 261.4(b)	Generation of solid waste is defined in 40 C.F.R. § 261.2 and which is not excluded under 40 C.F.R. § 661.4(a). Applicable.	40 C.F.R. § 262.11(a)
Hazardous waste packaging	Must properly package and label hazardous waste	Before transporting hazardous waste off-site, packaging and labeling requirements must be met. Applicable	40 C.F.R. § 262.30-33
Hazardous waste container and storage requirements	Must properly store hazardous waste.	Hazardous waste must be stored in proper containers. Relevant and appropriate.	40 C.F.R. § 264.171-173, 175, 177.
Hazardous waste placarding requirements	Must properly placard hazardous waste prior to transportation.	Before hazardous waste is transported off-site, must be properly placarded. Applicable.	40 C.F.R. § 268.9