

**From:** [Bryson, Josh](#)  
**To:** [Ford, Jim](#); [Greene, Nikia](#); [Reed, Daryl](#); [ehassler](#); [Wardell, Christopher](#); [O'Keefe, Jamie](#); [Urdiales, Aaron](#); [Bielenberg, Ben](#)  
**Cc:** [Martin, Douglas](#); [Greco, Chris](#)  
**Subject:** RE: FW: Grove Gulch Comment Discussion and Resolution  
**Date:** Monday, November 20, 2023 4:32:07 PM

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**Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Jim and Doug,

This is inconsistent with my understanding of which meetings are to be made available for public observation. Saving you some troubles, and cc'ing members of the EPA team, in addition to DEQ and BSB.

Nikia, please advise.

Josh

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**From:** Ford, Jim <JFord@mt.gov>  
**Sent:** Monday, November 20, 2023 4:22 PM  
**To:** Bryson, Josh <josh.bryson@bp.com>  
**Cc:** Martin, Douglas <dougmartin@mt.gov>; Greco, Chris <Chris.Greco@bp.com>  
**Subject:** RE: FW: Grove Gulch Comment Discussion and Resolution

Josh – Just an FYI sounds like we need this meeting recorded and publicly available. Doug is reaching out to everyone with a request. Jim

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**From:** Bryson, Josh <[josh.bryson@bp.com](mailto:josh.bryson@bp.com)>  
**Sent:** Monday, November 20, 2023 12:43 PM  
**To:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>  
**Cc:** Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>; Cunneen, Padraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; Greene, Nikia <[greenenikia@epa.gov](mailto:greenenikia@epa.gov)>; Greco, Chris <[Chris.Greco@bp.com](mailto:Chris.Greco@bp.com)>; Bielenberg, Ben <[bielenberg.ben@epa.gov](mailto:bielenberg.ben@epa.gov)>; ehassler <[ehassler@bsb.mt.gov](mailto:ehassler@bsb.mt.gov)>  
**Subject:** [EXTERNAL] RE: FW: Grove Gulch Comment Discussion and Resolution

Jim,

Hoping the meeting doesn't take the full time. Feel free to attend the portions that work for your schedule. We don't have any written "proposals" or response to comments to share in advance of the meeting. We'll be reviewing the EPA comments one by one, excepting those that we do not require clarification on or intend to contest.

I'll update the meeting with a Teams option.

Removing Katherine and Sydney.

Josh

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**From:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>  
**Sent:** Monday, November 20, 2023 12:13 PM  
**To:** Bryson, Josh <[josh.bryson@bp.com](mailto:josh.bryson@bp.com)>  
**Cc:** Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>; Cunneen, Padraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Stewart, Sydney <[Sydney.Stewart@mt.gov](mailto:Sydney.Stewart@mt.gov)>; Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; Greene, Nikia <[greenenikia@epa.gov](mailto:greenenikia@epa.gov)>; Greco, Chris <[Chris.Greco@bp.com](mailto:Chris.Greco@bp.com)>; Bielenberg, Ben <[bielenberg.ben@epa.gov](mailto:bielenberg.ben@epa.gov)>; ehassler <[ehassler@bsb.mt.gov](mailto:ehassler@bsb.mt.gov)>  
**Subject:** RE: FW: Grove Gulch Comment Discussion and Resolution

Hey Josh,

We have not heard back from you, but we have some considerations.

We are more than happy to clarify any of our Grove Gulch comments submitted to EPA, but until we get a written response from EPA we really don't have much to add. In addition, without some written proposals on what issues BP-AR would like to address, we won't be able to respond. We anticipate most responses will require internal discussion, especially considering these comments had CD interpretation/legal issues involved. Finally, being right before a holiday we don't have 5.5 hrs. to commit to this one meeting. (Or perhaps 5.5 hours was a mistake.) We can attend 2 hours of the meeting.

Please feel free to call if you would like to discuss.

Thanks, Jim

-----Original Appointment-----

**From:** Ford, Jim  
**Sent:** Thursday, November 16, 2023 11:52 AM  
**To:** Bryson, Josh  
**Subject:** Accepted: FW: Grove Gulch Comment Discussion and Resolution  
**When:** Tuesday, November 21, 2023 9:00 AM-2:30 PM (UTC-07:00) Mountain Time (US & Canada).  
**Where:** AR Kelley Office

Hay Josh,

To help focus this discussion can you give us some feedback on the specific items from EPAs and NRDP comments you guys have issue with? That would help us be prepared and hopefully move things forward.

Thanks, Jim

**From:** [Ford, Jim](#)  
**To:** [Hausrath, Katherine](#)  
**Subject:** FW: 10:00am, 12-21-23 Grove Gulch Coordination Meeting  
**Date:** Friday, April 5, 2024 12:46:24 PM  
**Attachments:** [image001.png](#)

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**From:** Ford, Jim  
**Sent:** Friday, December 15, 2023 11:18 AM  
**To:** Nikia Greene (EPA) <Greene.Nikia@epa.gov>  
**Cc:** Martin, Douglas <dougmartin@mt.gov>; Cunneen, Pdraig <PCunneen@mt.gov>; Stewart, Sydney <Sydney.Stewart@mt.gov>; Hausrath, Katherine <KHausrath@mt.gov>; Morgan, Jonathan <JMorgan3@mt.gov>; Reed, Daryl <dreed@mt.gov>; Stone, Kevin <Kevin.Stone@mt.gov>; Agee, Erin <Agee.Erin@epa.gov>  
**Subject:** 10:00am, 12-21-23 Grove Gulch Coordination Meeting

Nikia,

We are preparing for Thursdays Grove Gulch meeting and there is certain information we though could aid the discussion that we can't find. We think it would be extremely helpful to have the entire Grove Gulch project boundary and the BPSOU Boundary in that area, overlaid with the:

- a. sediment basin and additional basin features
- b. modeled area with modeled Wastes and actual sample locations identified;
- c. floodplain delineation; and
- d. 3-year high groundwater location throughout the Grove Gulch site area and the citation for this data.

If we could get this all on one figure, we think it could really expedite everyone's understanding of the issues and discussions. If that's not possible we can try to roughly overlay them but that may be a bit confusing. Also, could we get the estimated volume of Waste in the project area?

Thanks, Jim

Jim Ford  
Montana Natural Resource Damage Program  
406/439-2108



**From:** [Ford, Jim](#)  
**To:** [Agee, Erin](#)  
**Cc:** [Hausrath, Katherine](#); [Martin, Douglas](#); [Cunneen, Padraig](#); [Stewart, Sydney](#); [Greene, Nikia](#); [Balliew, Carolina](#); [Curt Coover \(CDM\)](#); [Reed, Daryl](#)  
**Subject:** Notes from 12-21-23 Grove Gulch Coordination Meeting  
**Date:** Thursday, December 21, 2023 4:31:43 PM  
**Attachments:** [2023.10.11 Highlighted NRDP 95% GG Comments - 12-21-23 Coordination Meeting Notes.docx](#)

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Erin,

Attached are NRDPs rough notes from today's meeting. I think our base letter was converted back from a pdf so its sort of a mess but you have the original letter. Thanks for the meeting and Happy Holidays!

Jim

# STATE OF MONTANA, NATURAL RESOURCE DAMAGE PROGRAM



## MEMORANDUM

**TO:** Ms. Erin Agee, Senior Assistant Regional Counsel, EPA  
Mr. Nikia Greene, Remedial Project Manager, EPA

**FROM:** NRDP

**DATE:** October 11, 2023 (Notes from the 12-21-23 NRDP – EPA coordination meeting)

**SUBJECT:** Comments on BPSOU Grove Gulch Submittals Received from British Petroleum  
– Atlantic Richfield (BP-AR) on 9/25/2023

The Montana Natural Resource Damage Program (NRDP) acts on behalf of the Governor as natural resource trustee to coordinate restoration with remedy, and also in our role as a State signatory to the Butte Priority Soils Operable Unit Consent Decree (BPSOU CD), to evaluate whether the work to be implemented complies with the BPSOU CD. In support of these roles, NRDP provides the following comments on BP-Atlantic Richfield's (BP-AR's) *Grove Gulch 95% Remedial Design* resubmittal from September 25, 2023.

Our evaluation, detailed in the comments, identified inconsistencies with two places in the BPSOU CD: Section 4.1.2 and footnotes showing the locations for Table 3 Engineered Cap/Cover Systems Material Suitability Criteria (Appendix D, Attachment C, the FRESOW). Additional comments are provided on the sampling and analysis and the use of the EVS model to delineate the Waste at the Grove Gulch site.

It is important to note, NRDP was not invited to the Grove Gulch technical meetings; thus, these comments are likely late in the design development process. However, NRDP believes these comments are important to ensure consistency with the BPSOU CD and to state for the record our concerns with the use of design methods and other details that should not be used at this and the other downstream sites within BPSOU.

As we have previously requested, please include us on all future comments and meetings.

## **General Comments:**

1. NRDP is concerned these documents do not articulate all of the BPSOU CD, Appendix D, Attachment C requirements (i.e., the requirement to remove all of the Waste in the floodplain outside of the sedimentation bay, see comments below.) We believe our previous request to develop a publicly available tracking system would be best to ensure all BPSOU CD requirements are met, such as a master table for BPSOU outlining the requirements and a notation as to specific sections of CD deliverables that meet each requirement. Specific to Grove Gulch, there are at least five different documents that include some portion of BPSOU CD compliance with these requirements. One document could include all the relevant information that demonstrates compliance with the numeric (Tables 1-3) and location-specific requirements of the BPSOU CD, Attachment C. EPA has previously stated that these requirements would be included in the Materials Management Plan, which we agree would be the appropriate document to capture CD compliance.

EPA sees the CD itself as the place for what is required. The design packages gets confusing – EPA did provide 3 comments about providing details. Comments 21 and 23. Several design documents include the CD requirements.

NRDP's request is what specific documents address particular CD requirements. E.g., the 3-year high groundwater is documented in X document and the waste characterization is addressed in Y document, floodplain removal is addressed in Z document. NRDP offered to provide EPA the spreadsheet that identifies the major components of Attachment C and then identifying and will attempt the document where it is being addressed.

2. The design package does not adequately characterize Waste for removal outside the sedimentation bay but within the floodplain, as required by the BPSOU CD. Section 4.1.2 of Attachment C provides,

*“Tailings, waste, and contaminated soils encountered outside of the sedimentation bay within the floodplain will be removed and disposed of as described in the paragraph below.”*

The “paragraph below” states:

*“Unless suitable for use as backfill (under Appendix 1, Table 2), removed tailings waste and contaminated soils shall be segregated and disposed of at a repository approved by EPA in consultation with DEQ, which is not located in the SBC-Above the Confluence or Blacktail Creek areas. Inert solid waste and construction debris may remain on-site for use as backfill that meets Table 2 of Appendix 1 criteria. All other municipal wastes, if encountered at the Grove Gulch area, shall be segregated and disposed of at an appropriate permitted facility by the SDs.”*

In addition to identifying all Waste that are required to be excavated from below the sedimentation bay, vegetated swale, or bypass Channel on Figure GG-1 of the BPSOU CD, BP-AR must identify the areas outside of the sedimentation bay, vegetated swale, or bypass,

but within the floodplain that contain Waste to be removed. The documents state that the entirety of Grove Gulch is in the floodplain, which indicates that all Waste within Grove Gulch needs to be characterized and removed per the BPSOU CD. The BPSOU CD text quoted above is not included in the Design Report Section 4.1, which lists the FRESOW requirements. The text of Section 2.2.1.2 of the RAWP references two areas for excavation outside of the sedimentation bay footprint, but Figure 2 does not clearly identify these areas (see Attachment A). Also, the sampling and characterization is not sufficient to determine that the remainder of the floodplain does not include Waste above the Table 1 criteria. See additional comments.

EPA: floodplain and project area. Issues with SWM model and how delineating drainages and volumes coming in and out. Several meetings with FEMA, BSB, etc. to identify the floodplain. Took about 2 years. BP-AR brought up the 3-year high groundwater. Material is saturated at Grove Gulch. Other sites had conceptual boundaries. GG only had the oval in Attachment C.

More of an “implementability issue”, given the lack of clarity on the horizontal project area. Not a chasing waste remedy. What does that mean?

Note that the ROD A figure follows property boundaries.

EPA required AR to remove the language re capping in the floodplain, because it also affects the floodplain FEMA “no rise” calculations.

BP-AR elected to remove 18 inches in the project area (wherever that is horizontally). Asked if the State’s intent in negotiations was to include full vertical removal of GG. [NOTE: this goes into CD negotiations so is not documented here.] 18 inches was based on not changing the landscape and affecting the floodplain, not based on sampling of contaminants (NRDP question?).

CDM/EPA showed a figure and a spreadsheet of sample data. CDM ran the EVS model and came up with something different (actually smaller). Then took data identified as waste and then ran it through LeapFrog, which was also different.

CDM most waste is in the shallow waste layer, consistent with fluvially deposited waste. The clay layer also contains it. Around 0-24 inches for most part.

NRDP: referenced the ROD amendment figure as a way to interpret the GG boundary (horizontal). Vertical Waste extent is very similar to Blacktail Creek or Butte Reduction Works etc re defining the vertical through the PDI ER Work Plans and confirmation sampling. Pointed out the language in Design Report FRESOW report re capping in floodplain. NRDP noted that the 18 inches everywhere is a different requirement than what Attachment C requires that all waste in the project

area in the floodplain be removed.

NRDP noted that BTC is no deeper than 5-8 feet based on the data that was available when they investigated the site. There was agreement that there was non BPSOU CD/Attachment C language that limited Waste removal only to the high 3-year GW level outside the basin but that is what EPA was proposing.

Who decided on the new project boundary? EPA: EPA came up with whatever is disturbed.

How was 18 inches chosen? EPA: not based on contamination, based on FEMA flood no rise determination.

EPA: only 2 samples were found to have Waste below 18 inches, but will be removed based on incidental need of excavation.

Don't need extra data to bid; need data at the end of the project (confirmation sampling to show the waste is removed and the backfill meets CD requirements).

**Summary:** NRDP would expect that the clay lens would be the floor of the waste but data should determine it. EPA/CDM seemed to agree on the clay lens based on the limited data. NRDP tentatively agrees with the disturbed area as the horizontal extent. NRDP wants to make sure all Waste in the project area, outside the basin, be removed as required in Attachment C. To do this with the current limited data and order-of-magnitude uncertainty with the model there will need to be confirmation sampling to document that all Waste is removed in that area (the area in the floodplain outside of the bay) which is required in Attachment C.

EPA needs to discuss a requirement to have confirmation sampling to ensure Waste removal. Issue put in parking lot until EPA gets back to NRDP.

3. The supplied documents do not contain sufficient characterization of site Waste, nor do they include a plan to characterize, identify, and remove all Waste within the floodplain, as required by the BPSOU CD (see General Comment 2).

The site investigation, Grove Gulch PDIER and the resulting Figure 2 (Attachment A), is an incomplete and inaccurate approximation of the nature and extent of GG Wastes per Table 1 of the BPSOU CD. According to the Materials Management Plan, Section 1.3 – Project Description, page 8, “Figure 2 shows the extent of waste identified on site.” However, Figure 2 only shows small patches of “waste” within the bigger CD-required area for Grove Gulch. The forms on Figure 2 look like an artifact of sample distribution rather than the nature and extent of fluviably-transported and distributed Waste. General Comment 5 further describes



how NRDP believes the EVS model is insufficient as the sole method of waste delineation. Complete delineation of Waste nature and extent requires additional field qualifying methods as well as confirmation sampling. Please identify where in the submittal is the document that describes how Waste will be characterized on the project area.

NRDP believes BP-AR should develop a sampling and analysis program to better identify Waste during construction and to confirm that all Waste is being removed as required by the BPSOU CD and all other numeric and location-specific requirements as defined in the BPSOU CD Attachment C are met.

4. It is unclear how the 3-year high groundwater level was determined. The EVS model memo indicates that one year of data (August 2020 to August 2021) was used as an input to the EVS model, which then interpolated the 3-year high groundwater level across the project site (Section 1.0, page 2). However, the memo later states that the 3-year high groundwater elevation was an input to the EVS model (Section 4.0, pages 8 and 9). It's unclear from these descriptions whether the 3-year high groundwater level was an input to EVS or an output from EVS.

EPA: only one year worth of data. BP-AR wanted to fast track the project to have a site go to construction so did not have 3-years. NRDP pointed out that Attachment C was released to the public and started work in January 2018. EPA did not push them on it because the 3-yr high groundwater was basically at ground surface. Satisfies that the area is seasonably saturated within the footprint (bay) area. Data from piezometers was input, the EVS spit out the 3-dimensional surface. Already have more than 3 years of data at the other sites.

NRDP is concerned about this being precedent at other BPSOU Sites.

5. The EVS model used to delineate Waste at Grove Gulch is based on limited data and includes a very high degree of uncertainty, making it inappropriate for use as the sole method of delineating Waste. Additional detail is needed in the material characterization plans that will allow for more accurate delineation of Wastes for this and future projects. Concerns with the EVS model being used for this purpose include:

- a. Mercury XRF results are unusable and mercury lab results from 2018 were rejected due to data quality concerns. Are the usable mercury results sufficient to characterize this contaminant at the site? Can waste be accurately delineated if one of the six contaminants was not adequately characterized? (Grove Gulch Soils Characterization Data Summary Report, Section 5.1, page 8)

None of the ICP Hg exceeded the waste criteria. NRDP: more of a looking forward question to other sites that might have Hg related Wastes. Want to make sure that the data are sufficient to characterize the waste for all of the 6 CD-required contaminants.

- b. The EVS model memo provides figures showing the model confidence for each

contaminant throughout the site and states that this represents the percent confidence that the true result falls within one order of magnitude of the interpolated result.

. Even the highest confidence level can only indicate that modeled concentrations are within an order of magnitude of the true concentration. With this level of uncertainty in concentrations, the model is not sufficient to be the sole indicator of waste on site. (Grove Gulch Earth Volumetric Studio Model Inputs, Section 2.5, page 6)

EPA agrees with this, may be relevant for other BPSOU projects. EPA in consultation with

DEQ will provide these comments for every phase of the design for other projects in the FRESOW. Different contractor at other locations. EPA believes they are using Leapfrog at BRW, Diggings east, and NST. Grove Gulch and Buffalo Gulch is EVS. Let's fix all of the issues going forward.

NRDP pointed out that only two other BPSOU CD projects, BTC and BRW, use the Waste criteria to define the vertical extent of removals which were unknown when Attachment C was finalized. These two projects are also in floodplains.

- c. Waste characterization depends on concentrations of all six contaminants: arsenic, cadmium, copper, lead, mercury, and zinc. Uncertainty is compounded when waste designation depends on concentrations of multiple contaminants, each of which has an order of magnitude uncertainty even at the highest level of confidence.
- d. The PDIER states that the EVS model indicates waste at PZ-GG-02, 18-24" bgs, though no waste was identified within this interval at the borehole. BP-AR uses this as evidence that the model is conservative in defining the waste extents. It seems more to indicate that the model is unreliable – predictions by the model are shown to be inaccurate. It is unclear, then, how well the model predicts the presence or absence of waste in locations where samples were not taken. (PDIER, Section 4.2, page 16)

Fix it now.

6. NRDP notes that there are EPA comments responded to in the crosswalk, e.g., dated May 16, 2022, which NRDP does not have record of receiving. Could EPA please check its distribution list for those comments and let us know if we received them (and presumably there was an error with the State email system)?

Check on it. NRDP received May 19, 2022.

7. Page 3-1, Section 3.2 and the defined terms of the RDWP uses the term "Metro Storm Drain." Please replace this term with "Silver Bow Creek" in this location and elsewhere in the documents for this site and other FRESOW documents.

Agreed.

### **Specific Comments on the Materials Management Plan:**

#### **1. Section 1.3.1 – Contaminants of Concern Sources (pg. 8)**

*“The contaminants of concern (COCs) identified in the BPSOU Record of Decision (EPA, 2006) (ROD) include aluminum, arsenic, cadmium, copper, iron, lead, mercury, silver, and zinc for surface water; arsenic, cadmium, copper, lead, mercury, and zinc for groundwater; and arsenic, lead, and mercury for solid media.”*

Contaminants of concern and their applicability to the project areas are defined in the BPSOU CD Attachment C. Arsenic, cadmium, copper, lead, mercury and zinc are the contaminants applicable to Grove Gulch soils and Table 1-Waste, Table 2-Fill. And Table 3-Capping (i.e., all solid media). Please correct.

#### **2. Figure 3: Waste Characterization and Management Decision Flow Chart (Attachment B)**

This decision tree does not explain how “material” will be “identified for excavation.” Is it implied that they will be visually identified? Will they be identified by utilizing Figure 2? Contaminants cannot be identified by visual or accurately predicted by modeling without statistically determined confidence intervals.

**EPA added this comment.**

### **Specific Comments on the Waste Management Plan (Attachment A to the Materials Management Plan):**

#### **1. Section 2.1 Characterization (pg. 7)**

*“The waste subject to the Grove Gulch RA was characterized based on all samples collected at the Site under the Grove Gulch Pre Design Investigation Evaluation Report (AR 2023a) and a review of past land uses of the Site, including review of historical maps, aerial photos, and Site visits. The waste identification criteria of heavy metals impacted waste is defined in the FRESOW Table 1.”*

There is no description of the Waste characterization to be performed in the field to document that materials meeting or exceeding the numeric criteria in Table 1-Waste in the floodplain have been excavated. Please provide the details of field screening for numeric confirmation.

**Goes to the above discussion.**

#### **2. Section 2.1 Characterization (pg. 7)**

This document refers to “heavy metals impacted waste,” in several locations, which is not a defined term BPSOU CD and may create confusion. Please use the terminology of the BPSOU CD; “Waste” is defined in Table 1 and elsewhere.

**Agreed will incorporate.**

#### **3. Section 2.2 Disposal (pg. 7)**

This document refers in numerous locations to the “selected repository,” which has not yet been selected. Will this document be updated once a repository is selected or will there be a separate document that specifies the “selected” repository and the haul methods and routes to move the wastes?

**Butte Mine Waste Repository is the selected repository.**

**Specific Comments on the Backfill Material Characterization and Reuse Plan (Attachment B to the Materials Management Plan):**

**1. Section 2.4 Sampling and Analysis (pg. 8)**

*“Confirmation sampling of potential onsite reuse material will not be completed since no existing onsite material will be reused at the Grove Gulch Site as part of this RA. All excavated material will be taken off-site and disposed of in accordance with the requirements and protocols of the Waste Management Plan, which is attached as Appendix A to the Materials Management Plan.”*

As stated above, NRDP does not agree that onsite soils removal obviates the need for confirmation sampling. To meet CD requirements, sampling must be performed to identify Table 1-Waste and ensure that all Waste has all been excavated or capped (depending on the location of the Waste; see comments above.) Limited pre-design investigation modeling and visual identification are inaccurate methods.

**Above discussion.**

**Specific Comments on the Construction Monitoring Quality Assurance Project Plan (QAPP):**

**1. Section 4.3.1 – Sampling of Imported or Borrow Soil Materials**

This section references “imported or borrow soil materials.” What is the distinction between “borrow” and “imported” materials? For BPSOU CD Table 2-Fill and Table 3-Capping, the BPSOU CD does not use “borrow” and it is unclear what is meant. These terms may suggest that the sampling process applies to imported or onsite reused material. Other documents for this project indicate that no onsite material will be reused at Grove Gulch. “Borrow material” should be defined, or references to it should be removed if it refers to backfill generated onsite and will not be used in project construction.

**EPA agrees and included this comment.**

**2. Section 4.3.1 – Sampling of Imported or Borrow Soil Materials**

This section states that “soils ... from sources that have been sampled and certified as acceptable materials during the BPSOU FRESOW construction may be used without any additional testing or certification, however the Construction Contractor shall verify and provide as a submittal prior to importing the material.” It goes on to state that “Ongoing sampling of import and borrow soil will be completed by the Construction Contractor at a frequency of one sample for every 500 CY of material used on site.” These statements seem contradictory. Perhaps the first statement is meant to say that “initial testing or certification” is not needed if the material has been previously certified? Ongoing sampling and analysis of imported material should be required to make sure that all soil meets the BPSOU CD Table 2-Fill requirements.

**Agreed with it. Have requested additional sampling. EPA did not agree with entire comment. Need to figure out frequency of sampling for all CD materials.**

**3. Section 4.3.1 – Sampling of Imported or Borrow Soil Materials**

NRDP does not believe the sampling proposed in this section is sufficient to ensure that the backfill material is uncontaminated. It is unclear who would “certify[y] as acceptable” the “borrow” materials from other FRESOW locations and how it would be demonstrated that these other materials meet all Table 2 backfill requirements. Further, the one sample per 500 cubic yards is not sufficient to characterize the backfill and is less protective than DEQ’s approach to adequately characterizing backfill. [See 2023 06 05 Clean Fill FAQ.pdf \(mt.gov\)](#)  
**EPA in consultation with DEQ, have borrow forms, review the criteria and make sure it is met. Prior to that validation and QA/QC on the samples. Need to figure out sampling frequency?**

**4. Table 3 Engineered Cap/Cover Systems Material Suitability Criteria (from FRESOW Table 3) (pg. 79)**

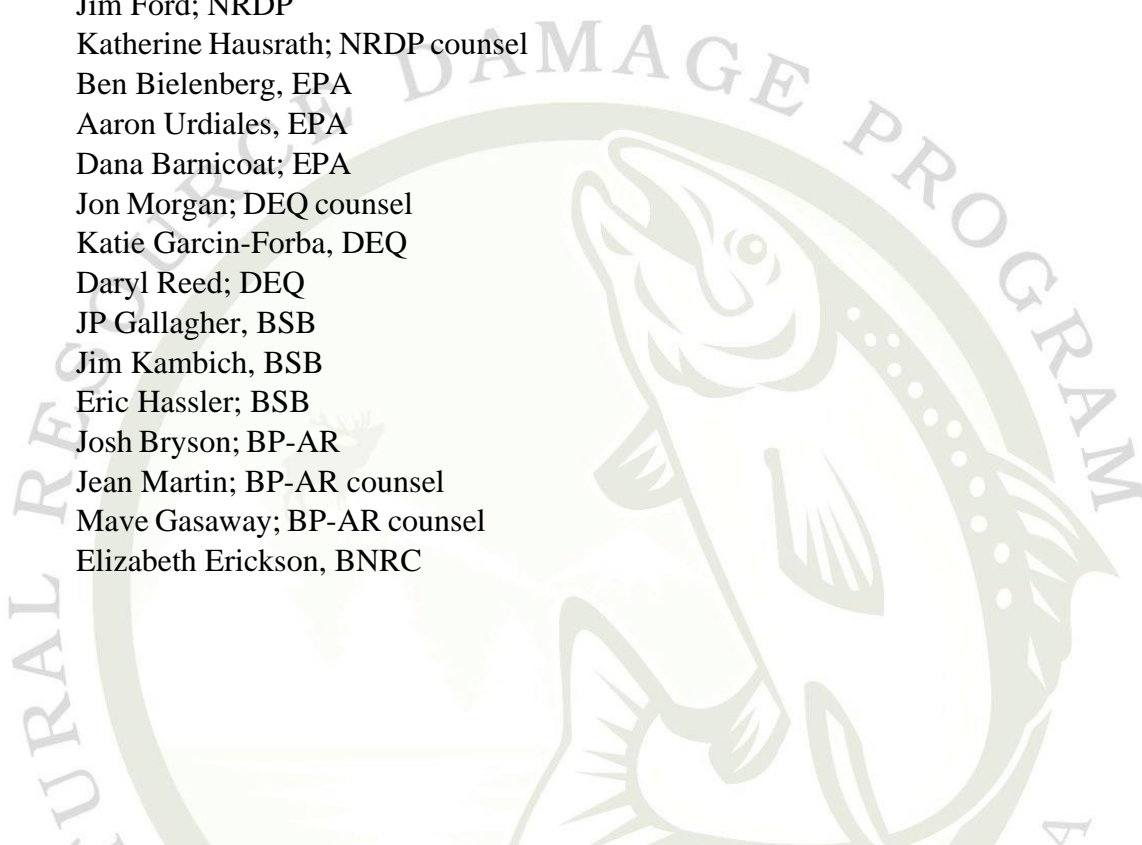
This Table has been modified from the BPSOU CD, Attachment C and as such is not representative of the location-specific requirements of the BPSOU CD. Specifically, the table changed the footnotes (Footnotes 5 and 6 in the BPSOU CD, Footnotes 1 and 2 in the QAPP) that reference the BPSOU CD figures that show where these caps are to be placed. Please correct or remove.

**EPA added comment.**

**Next steps, EPA understands NRDP’s interpretation of the BPSOU CD requirements for GG. NRDP believes the CD requires Waste in the GG floodplain to be removed and that there should be confirmation sampling to document that has been performed. EPA needs to discuss this internally and get back to NRDP after the new year.**

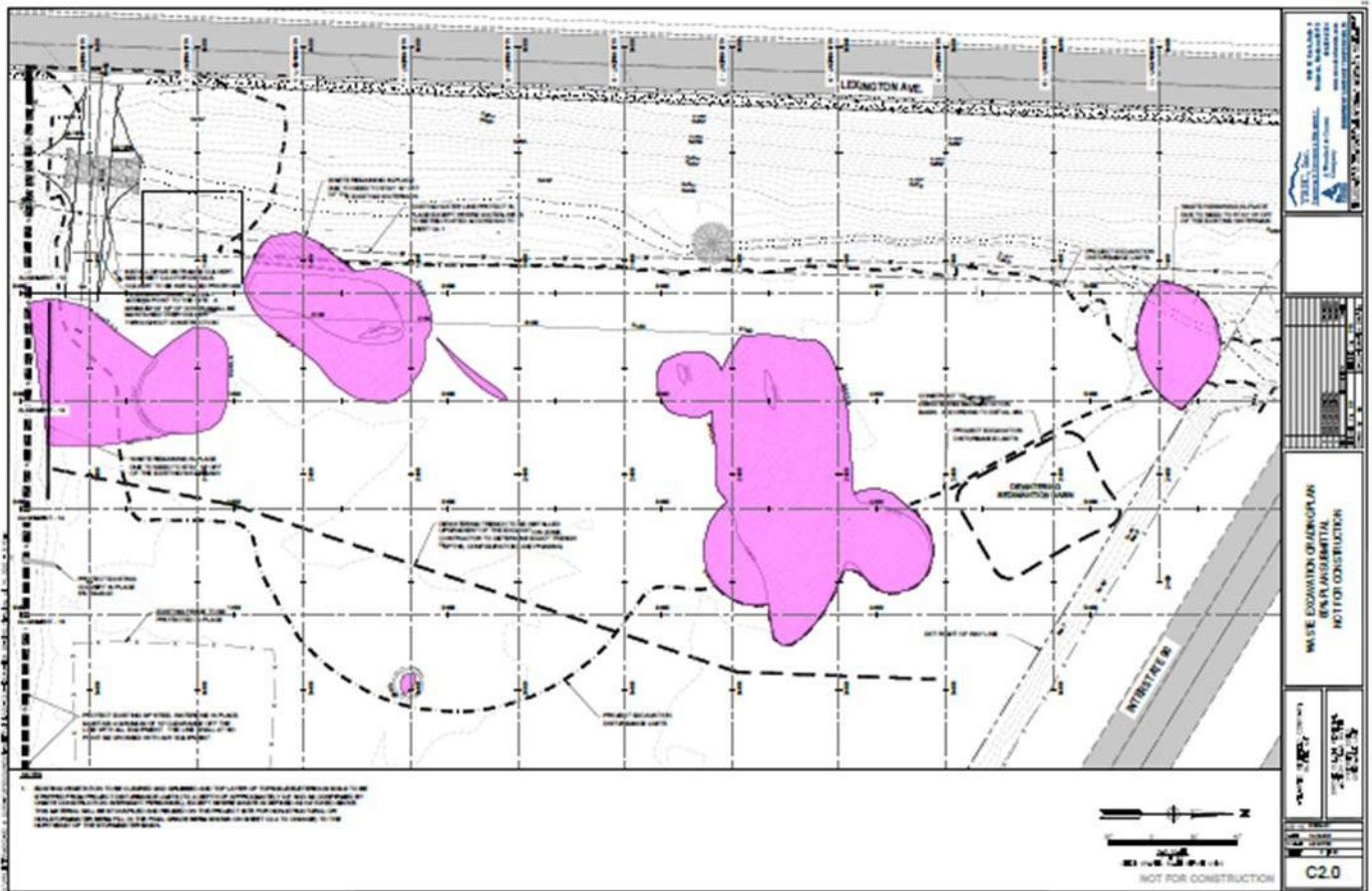
cc:

Pat Cunneen; NRDP  
Sydney Stewart, NRDP  
Jim Ford; NRDP  
Katherine Hausrath; NRDP counsel  
Ben Bielenberg, EPA  
Aaron Urdiales, EPA  
Dana Barnicoat; EPA  
Jon Morgan; DEQ counsel  
Katie Garcin-Forba, DEQ  
Daryl Reed; DEQ  
JP Gallagher, BSB  
Jim Kambich, BSB  
Eric Hassler; BSB  
Josh Bryson; BP-AR  
Jean Martin; BP-AR counsel  
Mave Gasaway; BP-AR counsel  
Elizabeth Erickson, BNRC



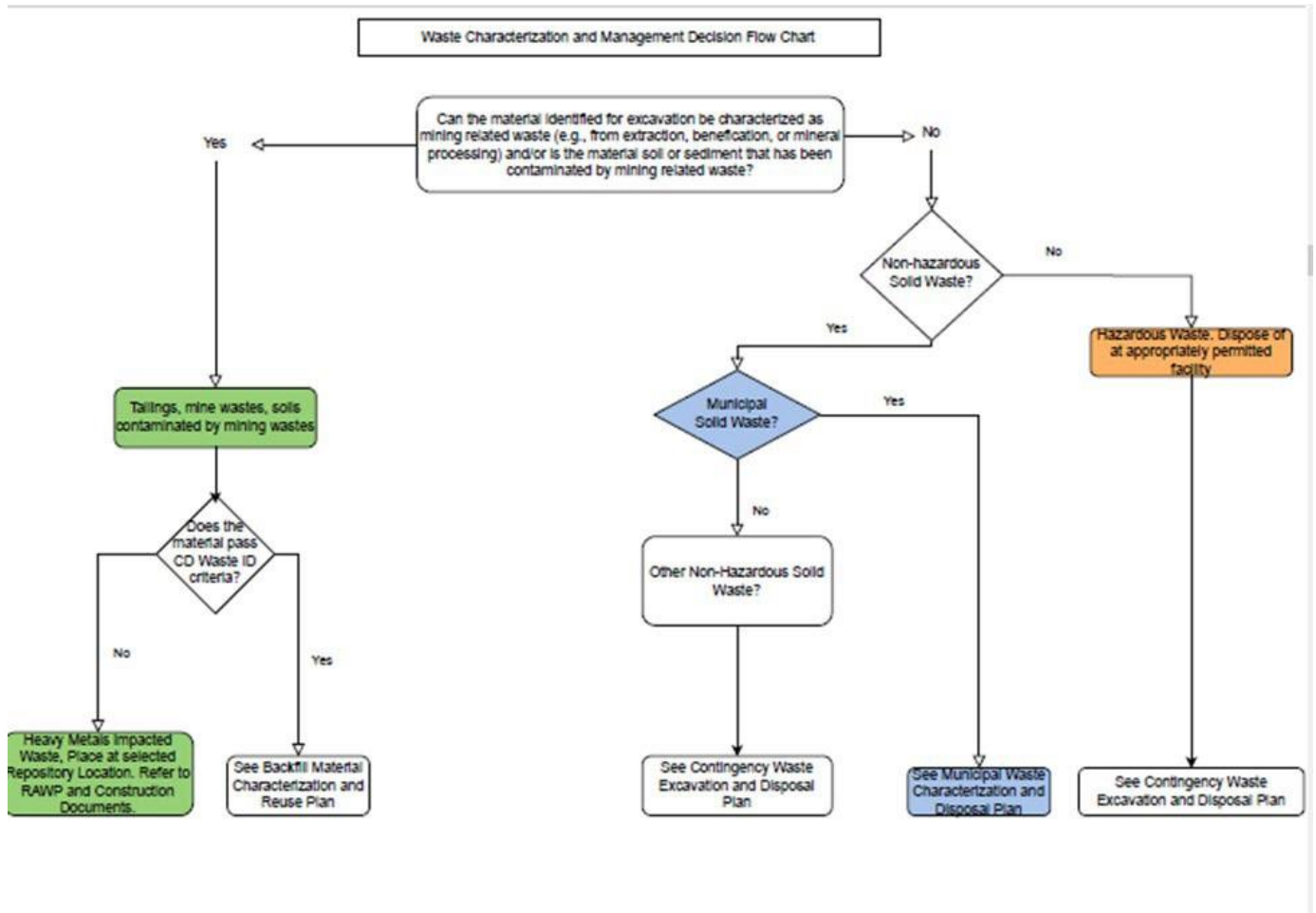
### Attachment A

### Materials Management Plan, Figure 2 Waste Excavation Grading Plan



### Attachment B

Figure 3: Waste Characterization and Management Decision Flow Chart



**From:** [Ford, Jim](#)  
**To:** [Hausrath, Katherine](#)  
**Subject:** FW: Notes from 12-21-23 Grove Gulch Coordination Meeting  
**Date:** Friday, April 5, 2024 12:43:31 PM

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**From:** Agee, Erin <Agee.Erin@epa.gov>  
**Sent:** Thursday, January 4, 2024 3:30 PM  
**To:** Ford, Jim <JFord@mt.gov>  
**Cc:** Hausrath, Katherine <KHausrath@mt.gov>; Martin, Douglas <dougmartin@mt.gov>; Cunneen, Padraig <PCunneen@mt.gov>; Stewart, Sydney <Sydney.Stewart@mt.gov>; Greene, Nikia <greene.nikia@epa.gov>; Balliew, Carolina <Balliew.Carolina@epa.gov>; Curt Coover <cooverca@cdmsmith.com>; Reed, Daryl <dreed@mt.gov>  
**Subject:** [EXTERNAL] RE: Notes from 12-21-23 Grove Gulch Coordination Meeting

Thank you, Jim! I will check in on our side about the notes I believe Mike was taking as well.

Erin Agee (she/her)  
Senior Assistant Regional Counsel  
Environmental Collaboration and Conflict Resolution Specialist  
US EPA Region 8 | Office of Regional Counsel | CERCLA Enforcement Section  
1595 Wynkoop Street | Denver, CO 80202 | Mail Code: 8ORC-C  
Phone: (303) 312-6374 | [agee.erin@epa.gov](mailto:agee.erin@epa.gov)

---

**From:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>  
**Sent:** Thursday, December 21, 2023 4:31 PM  
**To:** Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>  
**Cc:** Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>; Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>; Cunneen, Padraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Stewart, Sydney <[Sydney.Stewart@mt.gov](mailto:Sydney.Stewart@mt.gov)>; Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>; Balliew, Carolina <[Balliew.Carolina@epa.gov](mailto:Balliew.Carolina@epa.gov)>; Curt Coover <[cooverca@cdmsmith.com](mailto:cooverca@cdmsmith.com)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>  
**Subject:** Notes from 12-21-23 Grove Gulch Coordination Meeting

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Erin,

Attached are NRDPs rough notes from today's meeting. I think our base letter was converted back from a pdf so its sort of a mess but you have the original letter. Thanks for the meeting and Happy Holidays!

Jim



**Subject:** Grove Gulch Technical Resolution one Specific Issue

**When:** Wednesday, January 10, 2024 10:00 AM-11:30 AM (UTC-07:00) Mountain Time (US & Canada).

**Where:** Microsoft Teams Meeting

I am having one of those days. Lets try Wed.

Okay, lets try this day and time for a placeholder, please if you cannot make this day and time propose a few times that work for your schedule.

All,

I attempted to reach out to several of you to find a time that would work, but to no luck I did not get a chance to discuss with all of you. So, I am scheduling a technical meeting to brainstorm resolution on a particular issue that NRDP has raised In their comments attached. Specifically I would like to focus on NRDPs comment #2. Please forward the invite to your respected contractors where needed.

Thanks,  
Nikia

---

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**From:** [Ford, Jim](#)  
**To:** [Hausrath, Katherine](#)  
**Subject:** FW: Grove Gulch Technical Resolution one Specific Issue  
**Date:** Friday, April 5, 2024 12:42:35 PM

---

**From:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>  
**Sent:** Wednesday, January 10, 2024 9:44 AM  
**To:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>; Bryson, Josh <[josh.bryson@bp.com](mailto:josh.bryson@bp.com)>; ehassler <[ehassler@bsb.mt.gov](mailto:ehassler@bsb.mt.gov)>; Cunneen, Pdraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; [shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover <[cooverca@cdmsmith.com](mailto:cooverca@cdmsmith.com)>; [lan Magruder](mailto:lan.Magruder@wwcengineering.com) <[imagruder@wwcengineering.com](mailto:imagruder@wwcengineering.com)>; Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>; Balliew, Carolina <[Balliew.Carolina@epa.gov](mailto:Balliew.Carolina@epa.gov)>  
**Subject:** [EXTERNAL] RE: Grove Gulch Technical Resolution one Specific Issue

Jim,

Thank you for the information. I need to get direction from my management team on this issue and will cancel this morning's meeting.

Thanks,  
Nikia

---

**From:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>  
**Sent:** Wednesday, January 10, 2024 9:38 AM  
**To:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>; Bryson, Josh <[josh.bryson@bp.com](mailto:josh.bryson@bp.com)>; ehassler <[ehassler@bsb.mt.gov](mailto:ehassler@bsb.mt.gov)>; Cunneen, Pdraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; [shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover <[cooverca@cdmsmith.com](mailto:cooverca@cdmsmith.com)>; [lan Magruder](mailto:lan.Magruder@wwcengineering.com) <[imagruder@wwcengineering.com](mailto:imagruder@wwcengineering.com)>; Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>  
**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

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Nikia – NRDP plans to record all BPSOU meetings going forward including this one and posting them, so they are publicly available. If that is unacceptable to EPA please let us know but we won't be attending BPSOU meetings that the publicly is not invited or available to them. Sorry for the late notice. Jim

-----Original Appointment-----

**From:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>  
**Sent:** Monday, January 8, 2024 10:12 AM  
**To:** Greene, Nikia; Bryson, Josh; ehassler; Ford, Jim; Cunneen, Pdraig; Reed, Daryl; [shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover; [lan Magruder](mailto:lan.Magruder@wwcengineering.com)  
**Subject:** Grove Gulch Technical Resolution one Specific Issue

**When:** Wednesday, January 10, 2024 10:00 AM-11:30 AM (UTC-07:00) Mountain Time (US & Canada).

**Where:** Microsoft Teams Meeting

I am having one of those days. Lets try Wed.

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Thanks,  
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**From:** [Ford, Jim](#)  
**To:** [Hausrath, Katherine](#)  
**Subject:** FW: Grove Gulch Technical Resolution one Specific Issue  
**Date:** Friday, April 5, 2024 2:23:00 PM  
**Attachments:** [image001.png](#)

---

**From:** Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>  
**Sent:** Wednesday, January 10, 2024 10:51 AM  
**To:** Greene, Nikia <[greenenikia@epa.gov](mailto:greenenikia@epa.gov)>; Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>; Cunneen, Padraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; Balliew, Carolina <[Balliew.Carolina@epa.gov](mailto:Balliew.Carolina@epa.gov)>  
**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

Nikia and Carolina,

The NRDP plan to record all BPSOU meetings going forward was my decision based on the current requests. I have not had a chance to discuss this with DEQ management, but once I do and we have a State position I will let you know more information.

Thanks, Doug

Doug Martin  
Acting NRDP Manager  
Montana NRDP  
[P.O.Box \[p.o.box\]](#) 201425  
Helena, MT 59620-1425

Office 406/444-0234  
Cell 406/465-1131



---

**From:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>  
**Sent:** Wednesday, January 10, 2024 9:44 AM  
**To:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>; Bryson, Josh <[josh.bryson@bp.com](mailto:josh.bryson@bp.com)>; ehassler <[ehassler@bsb.mt.gov](mailto:ehassler@bsb.mt.gov)>; Cunneen, Padraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; [shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover <[cooverca@cdmsmith.com](mailto:cooverca@cdmsmith.com)>; Ian Magruder <[imagruder@wvcengineering.com](mailto:imagruder@wvcengineering.com)>; Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>; Balliew, Carolina

<[Balliew.Carolina@epa.gov](mailto:Balliew.Carolina@epa.gov)>

**Subject:** [EXTERNAL] RE: Grove Gulch Technical Resolution one Specific Issue

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Nikia

---

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**Sent:** Wednesday, January 10, 2024 9:38 AM

**To:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>; Bryson, Josh <[josh.bryson@bp.com](mailto:josh.bryson@bp.com)>; ehassler <[ehassler@bsb.mt.gov](mailto:ehassler@bsb.mt.gov)>; Cunneen, Padraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Reed, Daryl <[dreed@mt.gov](mailto:dreed@mt.gov)>; [shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover <[cooverca@cdmsmith.com](mailto:cooverca@cdmsmith.com)>; Ian Magruder <[imagruder@wwcengineering.com](mailto:imagruder@wwcengineering.com)>; Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>

**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

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Nikia – NRDP plans to record all BPSOU meetings going forward including this one and posting them, so they are publicly available. If that is unacceptable to EPA please let us know but we won't be attending BPSOU meetings that the publicly is not invited or available to them. Sorry for the late notice. Jim

-----Original Appointment-----

**From:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>

**Sent:** Monday, January 8, 2024 10:12 AM

**To:** Greene, Nikia; Bryson, Josh; ehassler; Ford, Jim; Cunneen, Padraig; Reed, Daryl; [shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover; Ian Magruder

**Subject:** Grove Gulch Technical Resolution one Specific Issue

**When:** Wednesday, January 10, 2024 10:00 AM-11:30 AM (UTC-07:00) Mountain Time (US & Canada).

**Where:** Microsoft Teams Meeting

I am having one of those days. Lets try Wed.

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Thanks,  
Nikia

---

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**From:** [Agee, Erin](#)  
**To:** [Rott, Emma \(she/her/hers\)](#); [Roby, Molly](#)  
**Cc:** [Lindsey, William](#); [Mathieu, Benjamin](#)  
**Subject:** FW: Grove Gulch Technical Resolution one Specific Issue  
**Date:** Monday, March 18, 2024 3:50:12 PM

---

Emma and Molly,

See below for my correspondence with Katherine H. on the written response topic for NRDP's Grove Gulch comments. Happy to talk!

Erin

Erin Agee (she/her)  
Senior Assistant Regional Counsel  
Environmental Collaboration and Conflict Resolution Specialist  
US EPA Region 8 | Office of Regional Counsel | CERCLA Enforcement Section  
1595 Wynkoop Street | Denver, CO 80202 | Mail Code: 8ORC-C  
Phone: (303) 312-6374 | [agee.erin@epa.gov](mailto:agee.erin@epa.gov)

---

**From:** Agee, Erin  
**Sent:** Wednesday, January 10, 2024 8:28 PM  
**To:** Hausrath, Katherine <KHausrath@mt.gov>  
**Cc:** Morgan, Jonathan <JMorgan3@mt.gov>  
**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

Katherine,

Thank you for your thoughts on this piece. EPA thinks the issues raised in NRDP's Comment 2 are better addressed through discussion among the program staff (at EPA, DEQ, NRDP, BSB, CTEC, and AR) who regularly sort through the BPSOU remedial design requirements and details. During our December 21, 2023, meeting with NRDP regarding NRDP's Grove Gulch comments, it seemed as though progress was possible on the issues raised by NRDP's Comment 2 and we remain hopeful that the design team can effectively talk through the practical pieces and brainstorm options. EPA remains committed to the timely and effective implementation of the BPSOU remedy and going through the process to issue written responses to design questions such as those raised in NRDP's Comment 2 does not, in EPA's view, help achieve this goal. We recognize NRDP sees it differently, however, we want to share our perspective so you know more of the reasoning behind our approach at this time.

Thanks,

Erin

Erin Agee (she/her)

Senior Assistant Regional Counsel  
Environmental Collaboration and Conflict Resolution Specialist  
US EPA Region 8 | Office of Regional Counsel | CERCLA Enforcement Section  
1595 Wynkoop Street | Denver, CO 80202 | Mail Code: 8ORC-C  
Phone: (303) 312-6374 | [agee.erin@epa.gov](mailto:agee.erin@epa.gov)

---

**From:** Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>  
**Sent:** Wednesday, January 10, 2024 12:50 PM  
**To:** Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>  
**Cc:** Morgan, Jonathan <[JMorgan3@mt.gov](mailto:JMorgan3@mt.gov)>  
**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

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EPA said in the meeting it would respond to NRDP on Comment 2, which is primarily a legal issue. This commitment to follow up with NRDP is provided in the meeting notes and was clearly articulated on the meeting by Nikia and others. We recognize that EPA wants to understand the Settling Defendants' perspective.

However, we are concerned that deferring this legal issue to the "technical team" will not facilitate prompt resolution. (It seems like no matter how any technical meeting goes, this issue requires resolution from you and others at EPA who would not be at a technical meeting.) We are very supportive of EPA coming to a documented decision as quickly as possible, to provide the transparent, accountable progress towards implementation of remedy requested by NRDP, the community, and others.

Katherine Hausrath  
Assistant Attorney General  
Montana Natural Resource Damage Program  
Cell phone: (406) 422-3679

---

**From:** Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>  
**Sent:** Monday, January 8, 2024 5:22 PM  
**To:** Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>  
**Cc:** Morgan, Jonathan <[JMorgan3@mt.gov](mailto:JMorgan3@mt.gov)>  
**Subject:** [EXTERNAL] RE: Grove Gulch Technical Resolution one Specific Issue

Thanks. I looked back at the notes too and checked in with Carolina as well. It sounds like our next step is for the technical team to discuss in a meeting rather than EPA issue a written response at this stage.

Erin Agee (she/her)  
Senior Assistant Regional Counsel



Environmental Collaboration and Conflict Resolution Specialist  
US EPA Region 8 | Office of Regional Counsel | CERCLA Enforcement Section  
1595 Wynkoop Street | Denver, CO 80202 | Mail Code: 8ORC-C  
Phone: (303) 312-6374 | [agee.erin@epa.gov](mailto:agee.erin@epa.gov)

---

**From:** Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>  
**Sent:** Monday, January 8, 2024 5:07 PM  
**To:** Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>  
**Cc:** Morgan, Jonathan <[JMorgan3@mt.gov](mailto:JMorgan3@mt.gov)>  
**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

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Thanks, Erin. I checked the notes and it just says EPA will get back to NRDP on Comment 2. I suppose we had all understood EPA would follow up in writing. That would be helpful for moving forward on the issue, I would think.

Katherine Hausrath  
Assistant Attorney General  
Montana Natural Resource Damage Program  
Cell phone: (406) 422-3679

---

**From:** Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>  
**Sent:** Monday, January 8, 2024 4:30 PM  
**To:** Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>  
**Cc:** Morgan, Jonathan <[JMorgan3@mt.gov](mailto:JMorgan3@mt.gov)>  
**Subject:** [EXTERNAL] RE: Grove Gulch Technical Resolution one Specific Issue

Hi Katherine,

I don't remember the decision that EPA would provide a written response. I can check in with others on our team who were there because maybe I am misremembering/not remembering something.

Stay tuned!

Thanks,

Erin

Erin Agee (she/her)  
Senior Assistant Regional Counsel  
Environmental Collaboration and Conflict Resolution Specialist

US EPA Region 8 | Office of Regional Counsel | CERCLA Enforcement Section  
1595 Wynkoop Street | Denver, CO 80202 | Mail Code: 8ORC-C  
Phone: (303) 312-6374 | [agee.erin@epa.gov](mailto:agee.erin@epa.gov)

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**From:** Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>  
**Sent:** Monday, January 8, 2024 4:23 PM  
**To:** Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>  
**Cc:** Morgan, Jonathan <[JMorgan3@mt.gov](mailto:JMorgan3@mt.gov)>  
**Subject:** RE: Grove Gulch Technical Resolution one Specific Issue

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Erin,

Jim forwarded this to me for informational purposes. When we met with EPA in December, we left it that EPA planned to get back to us with a written response this issue. I assume EPA is still planning on doing that?

Thanks!

Katherine Hausrath  
Assistant Attorney General  
Montana Natural Resource Damage Program  
Cell phone: (406) 422-3679

-----Original Appointment-----

**From:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)> **On Behalf Of** Greene, Nikia  
**Sent:** Monday, January 8, 2024 10:29 AM  
**To:** Martin, Douglas; Hausrath, Katherine; Cunneen, Pdraig; Stewart, Sydney  
**Subject:** FW: Grove Gulch Technical Resolution one Specific Issue  
**When:** Tuesday, January 9, 2024 3:30 PM-5:00 PM (UTC-07:00) Mountain Time (US & Canada).  
**Where:** Microsoft Teams Meeting

-----Original Appointment-----

**From:** Greene, Nikia <[Greene.Nikia@epa.gov](mailto:Greene.Nikia@epa.gov)>  
**Sent:** Monday, January 8, 2024 10:12 AM  
**To:** Greene, Nikia; Bryson, Josh; ehassler; Ford, Jim; Cunneen, Pdraig; Reed, Daryl;  
[shanightdt@cdmsmith.com](mailto:shanightdt@cdmsmith.com); Curt Coover; Ian Magruder  
**Subject:** Grove Gulch Technical Resolution one Specific Issue  
**When:** Tuesday, January 9, 2024 3:30 PM-5:00 PM (UTC-07:00) Mountain Time (US & Canada).  
**Where:** Microsoft Teams Meeting

All,

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Thanks,  
Nikia

---

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---

**From:** [Ford, Jim](#)  
**To:** [Rott, Emma \(she/her/hers\)](#)  
**Cc:** [Martin, Douglas](#); [Hausrath, Katherine](#); [Cunneen, Padraig](#); [Agee, Erin](#); [Balliew, Carolina](#); [Garcin-Forba, Katherine](#); [Stewart, Sydney](#); [Stone, Kevin](#); [Morgan, Jonathan](#); [Reed, Daryl](#)  
**Subject:** RE: NRDPs October 11, 2023 Grove Gulch 95% Comments  
**Date:** Friday, March 22, 2024 2:30:39 PM  
**Attachments:** [image001.png](#)

---

Emma,

Thanks for getting back to me. NRDP stands by its comments concerning the Grove Gulch (GG) 95% design and concerns that it does not meet the BPSOU CD requirements as stated in our October 11, 2023 comment letter. Please note that NRDP GG comments are a combination of both technical and legal comments of the CD requirements. We understand EPA is lead agency and does not have to accept our comments; however, we believe EPA responding to us is how it should be appropriately resolved so there is clear documentation on EPA's response to our comments (and what was committed to in December 2023 by EPA), rather than through a discussion in the "technical" meetings with all of the CD parties that are not documented and don't include legal counsel.

Not to continue to debate the issue, however, NRDP would like to note, we were not included in the GG technical meetings, prior to EPA's November 21<sup>st</sup> GG meeting, where it appears decisions on interpretation of the CD had been made. EPA did not consult with us on if or how our comments were incorporated (our Comment 2 was excluded) into EPA's November comment letter or prior to the November 21<sup>st</sup> GG meeting with BP-AR where EPA expressly excluded discussion of any NRDP October 11<sup>th</sup> comments.

We hope going forward the agencies (EPA, DEQ, NRDP) will consult on comments so we all understand each other's technical and legal positions prior to submittal to BP-AR. This communication will help us all and we will be able to support each other. We will attend RDRA meeting next week and will refrain from discussing this GG matter until there is resolution. Although it may not be possible for this meeting, an agency pre-meeting would be beneficial for the reasons stated above.

Have a good weekend. Thanks Jim

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**From:** Rott, Emma (she/her/hers) <Rott.Emma@epa.gov>  
**Sent:** Friday, March 22, 2024 7:29 AM  
**To:** Ford, Jim <JFord@mt.gov>  
**Cc:** Martin, Douglas <dougmartin@mt.gov>; Hausrath, Katherine <KHausrath@mt.gov>; Cunneen, Padraig <PCunneen@mt.gov>; Agee, Erin <Agee.Erin@epa.gov>; Balliew, Carolina <Balliew.Carolina@epa.gov>; Garcin-Forba, Katherine <Katie.Garcin-Forba@mt.gov>; Stewart, Sydney <Sydney.Stewart@mt.gov>; Stone, Kevin <Kevin.Stone@mt.gov>; Morgan, Jonathan <JMorgan3@mt.gov>; Reed, Daryl <dreed@mt.gov>  
**Subject:** [EXTERNAL] RE: NRDPs October 11, 2023 Grove Gulch 95% Comments

Hi Jim –

Thank you for reaching out. I have been working with EPA's team to better understand the discussions and correspondences that have taken place, to date, regarding NRDP's submission of comments on the 95% Grove Gulch design. EPA, in consultation with DEQ, submitted comments to AR on the 95% Design in November, which incorporated some comments from NRDP's comment letter. From the correspondence attached (RE:FW: Grove Gulch Comment Discussion and Resolution), it appears there was an attempt to set up a meeting to discuss NRDP's comments with AR in November that was cancelled due to confusion with the State's interpretation of open meetings. A meeting was then held in December with EPA, NRDP, and DEQ to discuss remaining comments submitted from NRDP. Your previous email attached the email I've been forwarded, which included notes from that discussion. From the correspondence attached (FW: Grove Gulch Technical Resolution one Specific Issue), EPA's counsel stated to NRDP's counsel that EPA remains committed to the timely and effective implementation of the BPSOU remedy and going through the process to issue written responses to design questions such as those raised in NRDP's Comment 2 does not, in EPA's view, help achieve this goal. I understand that there was a commitment made by EPA to follow up with NRDP and AR after the December meeting to discuss NRDP's Comment 2, collectively. An attempt was made by EPA in January to set up that meeting, however, there was confusion with the State's interpretation of open meetings resulting in cancellation of that meeting. EPA's team apologizes for delays in design discussions during the recent RPMs transitions, and as the RDRA meetings were being rescheduled.

Lastly, I am planning on attending the RDRA meeting on Tuesday in person at the Kelley. Hope to see you there.

Thank you,

Emma Rott (she/her)  
Remedial Project Manager  
U.S. Environmental Protection Agency  
8SEM-RBC  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, Montana 59626  
(406) 438-0823  
[rott.emma@epa.gov](mailto:rott.emma@epa.gov)

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**From:** Ford, Jim <[JFord@mt.gov](mailto:JFord@mt.gov)>

**Sent:** Tuesday, March 19, 2024 1:02 PM

**To:** Rott, Emma (she/her/hers) <[Rott.Emma@epa.gov](mailto:Rott.Emma@epa.gov)>

**Cc:** Martin, Douglas <[dougmartin@mt.gov](mailto:dougmartin@mt.gov)>; Hausrath, Katherine <[KHausrath@mt.gov](mailto:KHausrath@mt.gov)>; Cunneen, Pdraig <[PCunneen@mt.gov](mailto:PCunneen@mt.gov)>; Agee, Erin <[Agee.Erin@epa.gov](mailto:Agee.Erin@epa.gov)>; Balliew, Carolina <[Balliew.Carolina@epa.gov](mailto:Balliew.Carolina@epa.gov)>; Garcin-Forba, Katherine <[katie.garcin-forba@mt.gov](mailto:katie.garcin-forba@mt.gov)>; Stewart, Sydney <[Sydney.Stewart@mt.gov](mailto:Sydney.Stewart@mt.gov)>; Stone, Kevin <[Kevin.Stone@mt.gov](mailto:Kevin.Stone@mt.gov)>; Morgan, Jonathan <[JMorgan3@mt.gov](mailto:JMorgan3@mt.gov)>

**Subject:** NRDPs October 11, 2023 Grove Gulch 95% Comments

**Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Emma,

At the December 21, 2023 Agency Grove Gulch meeting, we talked about many of NRDP October 1, 2023 comments (attached), but as our attached notes indicate, our comments were unresolved. Our primary comments were with Attachment C GG Waste removal requirements and the need for confirmation sampling to ensure Table 1, Table 2, and Table 3 numeric requirements are being met. We see these issues as substantive to BPSOU CD compliance so have requested a written response. If you think it would help with EPA developing responses, we would be happy to meet and clarify any issues raised in our letter. Just let me know and I can try and arrange a time on our end.

Thanks again, Jim

Jim Ford  
Montana Natural Resource Damage Program  
406/439-2108

