



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: 8ENF-L

**JUL 31 2008**

Mr. Jim Rodgers  
Jim's Water Service, Inc.  
P.O. Box 2290  
Gillette, Wyoming 82716

Re: Jim's Water Service, Inc., Werner Commercial Oilfield Waste Disposal Facility,  
Administrative Order Pursuant to Section 7003 of RCRA


Dear Mr. Rodgers:

Enclosed please find a copy of the administrative order we are issuing today to Jim's Water Service, Inc. The order is issued under the authority of Section 7003 of the Solid Waste Disposal Act, as amended (commonly referred to as the Resource Conservation and Recovery Act, or "RCRA"), 42 U.S.C. § 7003. The order requires that Jim's Water Service quickly take steps to repair existing netting erected over the skim pits at its Werner facility in Converse County, Wyoming, and expeditiously develop and implement a work plan to address threats presented to the environment (particularly wildlife) at the facility. The order also requires that the facility hereafter be maintained and operated in a manner that is protective of the environment.

As detailed in the order, we have determined that conditions at the facility once again pose an imminent threat to wildlife due to the mismanagement of oily waste in the evaporation pond and the condition of the netting for the skim pits. EPA and the U.S. Fish and Wildlife Service have previously advised you of these adverse environmental conditions. Since 1994, both agencies have noted that wildlife has come into contact with oily wastes at the evaporation pond and skim pits, resulting in migratory bird mortalities. We have concluded that an order is necessary and warranted to ensure that the threats are addressed as quickly as possible.

If you have any questions or would like to set up a conference within the time frame as outlined in the order, please feel free to contact Randy Lamdin at (303) 312-6350.

Sincerely,

  
Sharon L. Kercher, Director  
Technical Enforcement Program

  
David J. Janik  
Supervisory Enforcement Attorney

enc.



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

2008 JUL 31 AM 9:27

Docket No. RCRA-08-2008-0008

EPA REGION VIII  
MONTGOMERY CENTER

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IN THE MATTER OF: )  
)  
)

Jim's Water Service, Inc. )  
P.O. Box 2290 )  
Gillette, Wyoming 82716, )

Respondent. )  
\_\_\_\_\_ )

**INITIAL ADMINISTRATIVE ORDER  
PURSUANT TO  
SECTION 7003 OF RCRA**

**I. JURISDICTION**

The United States Environmental Protection Agency Region VIII ("EPA") issues this Order pursuant to its authority in section 7003 of the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act, or "RCRA"), as amended, 42 U.S.C. § 6901 *et seq.* ("the Act"), 42 U.S.C. § 6973.

**II. INTRODUCTION**

- A. Jim's Water Service, Inc. ("JWS" or "Respondent") is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. JWS has handled "solid waste" within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27) at a commercial oil disposal facility known as the Werner Ranch Disposal Facility, which is located in the NW 1/4 of Section 28, Township 36 North, Range 70 West, 6<sup>th</sup> P.M., Converse County, Wyoming ("Werner" or "the Facility").
- C. Based upon evidence received, EPA has determined that Respondent's handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.
- D. Pursuant to Section 7003(a) of the Act, EPA notified Mr. John Wagner, Administrator of the Water Quality Division, Wyoming Department of Environmental Quality ("WDEQ") of this action on July 25, 2008. Also pursuant to Section 7003(a) of the Act, EPA notified Dr. Sherri Blanchard, County Health Officer, Converse County Health Department, on July 25, 2008.
- E. Documents comprising the administrative record for this Order are referred to as "AR-#". An index to the administrative record is provided as Attachment 1 to this Order.

- F. EPA takes this action pursuant to Section 7003 having determined that the issuance of this Order is necessary to protect human health and/or the environment.

### **III. PARTIES BOUND**

- A. This Order shall apply to and be binding upon Respondent, its employees, agents, successors and assigns.
- B. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within two (2) calendar days of the date of Respondent's receipt of this Order or date of such retention, and shall condition all such contracts on compliance with terms of this Order.
- C. Respondent shall give notice to EPA thirty (30) or more days prior to transfer of ownership or operation of the Facility.

### **IV. FINDINGS OF FACT**

- A. The Facility is located approximately in the NW 1/4 of Section 28, Township 36 North, Range 70 West, 6<sup>th</sup> P.M., at latitude 43-04-16.5 N, longitude 105-15-57.0 W, in a rural/remote area on the west side of and adjacent to Highway 59 approximately 11 miles south of Bill and 23 miles north of Douglas in Converse County, Wyoming.
- B. The Facility has been in operation since approximately 1983.
- C. Structures at the Facility include: four (4) 1000 barrel storage tanks; one (1) evaporation pond measuring approximately (600' x 400'); two (2) skim pits measuring approximately 100' x 100' each; and one (1) transfer box.
- D. The Facility receives produced water from oil field production operations which is typically deposited into the skim pits via pipeline. Oil is removed from the pits with a vacuum truck and stored in the storage tanks. The separated process water is allowed to flow by gravity from the skim pits to the evaporation pond. The process water is disposed of through evaporation.
- E. In September 1994, The U.S. Fish and Wildlife Service ("USFWS") inspected the Facility and found 22 bird carcasses at the site, including herons, ducks, and grebes, all covered with oil. The skim pits and evaporation pond all contained heavy oil on the surface and none were netted. (AR # 1)

- F. After notification from USFWS, in November 1994, Respondent agreed to install protective netting over the skim pits and remove the oil from the evaporation pond. (AR # 2)
- G. In March 1998 and September 1998, inspectors from EPA, USFWS, and WDEQ inspected the Facility and observed that the netting was sagging below the surface of the skim pits due to accumulated snow and ice and was in need of additional repair along the perimeter of the pits. (AR # 3) JWS agreed to submit an operation and maintenance plan to WDEQ, describing how the Facility would be operated in order to minimize the oil being discharged to the evaporation pond and to address "upsets" resulting in releases to the evaporation pond. This operation and maintenance plan was not submitted to WDEQ by the stipulated deadline. (AR # 3)
- H. During a field inspection on April 11, 2001, USFWS inspectors observed that the netting at the Facility was weathered and sagging below the surface of the pits. (AR # 4)
- I. In a letter dated April 16, 2001, USFWS notified Respondent that the netting needed to be repaired and advised Respondent that netting required intensive maintenance to prevent wildlife mortalities. USFWS gave Respondent specific instructions about adequate netting, including the fact that netting should be suspended 4 to 5 feet above the surface of the pits to prevent sagging into the fluids, and provided specific information about constructing a framework that would be adequate to support the netting. (AR # 4)
- J. In November 2001, inspectors from EPA, USFWS and WDEQ inspected the Facility and observed gaps in the netting, as well as the fact that the netting was sagging beneath the surface at both skim pits. (AR # 5)
- K. EPA sent Respondent a Warning Letter dated November 26, 2001, requesting that Respondent take remedial action to ensure that the netting was protective of migratory birds and other wildlife. (AR # 6)
- L. Respondent contacted EPA by letter dated February 28, 2002 and notified the agency that the netting had been replaced and stabilized. (AR # 7)
- M. In June 2002, inspectors from EPA and USFWS inspected the Facility and found the netting and framework to be adequate. (AR # 8)
- N. In a letter dated December 31, 2002, EPA notified Respondent that because the netting and framework at the Facility was adequate, EPA was bringing the matter to closure. (AR # 9)
- O. On August 23, 2004, inspectors from EPA, USFWS, and WDEQ inspected the Facility and found that in two areas, the netting was no longer secured to the ground, allowing

access to the skim pits by wildlife. They also found 11 bird carcasses, including ducks, grebes and a swallow, along the shoreline of the evaporation pond. (AR # 10)

- P. On August 17, 2006, inspectors from EPA and USFWS inspected the Facility and found that the netting on one skim pit was sagging below the surface, and that the netting at both pits was in disrepair and the vertical sides of the netting ("skirts") needed to be reanchored to the ground. They also observed that there was an oil sheen on the eastern shore of the evaporation pond. (AR # 11)
- Q. On September 14, 2006, inspectors from EPA and USFWS conducted a follow-up inspection of the Facility and found minor tears along the netting skirts and a live, oiled songbird (later euthanized) hanging from one of the skirts. They also observed that there was surface oil at the northeast corner of the evaporation pond and the eastern shore was oil stained. There were two live, oil-covered coots swimming in the pond and a bird carcass on the northeast corner. (AR # 12)
- R. On December 4, 2006, USFWS notified Respondent of the problems at the Facility and that steps needed to be taken to ensure that migratory birds would not come into contact with the oil, and that oil, sludges and sheens needed to be removed immediately from the evaporation pond. (AR # 13)
- S. On June 7, 2007, inspectors from EPA, USFWS and WDEQ inspected the Facility and found that the surface of the evaporation pond was oil-free and that the netting was adequate. (AR # 14)
- T. On August 24, 2007, inspectors from EPA, USFWS, and WDEQ inspected the Facility and observed emulsified oil along the west side of the evaporation pond as well as an extensive sheen. Three bird carcasses were found at the edge of the evaporation pond. Holes in the netting over the south skim pit were also observed. The inspectors also observed evidence that produced water and drilling muds were being directly off-loaded from trucks into the evaporation pond. (AR # 15)
- U. On October 12, 2007, inspectors from EPA and USFWS inspected the Facility and observed drilling muds in the evaporation pond and a tanker truck discharging directly into the evaporation pond. The inspectors captured a live, oil-covered grebe from the evaporation pond which was rehabilitated at a clinic. The inspectors also recovered two American Coot carcasses, a ruddy duck carcass, and a songbird carcass, all oil-covered, from the pond area, and observed another unidentified carcass. They also observed an oil-covered rabbit carcass at a corner of the evaporation pond. (AR # 16)
- V. On October 15, 2007, EPA contacted Larry Baccari, consultant for Respondent, via telephone and advised him of the endangerment to wildlife posed by conditions at the

Facility. On October 16, 2007, EPA faxed to Baccari a USEPA Notice of Inspection which outlined the specific problems observed by the inspectors. (AR # 17)

- W. On October 24, 2007, inspectors from USFWS and WDEQ inspected the Facility and again observed drilling muds in the evaporation pond. Oil sheens were visible throughout the surface of the evaporation pond. The inspectors observed a live grebe swimming in the pond, and recovered two ruddy duck carcasses, one songbird carcass, and four grebe carcasses, all oil-covered, from the pond area. (AR # 18)
- X. On November 7, 2007, inspectors from EPA, USFWS, and WDEQ inspected the Facility and observed a significant amount of drilling muds in the evaporation pond. The inspectors noted that although the condition of the pond had improved, there was still a light crude oil surface sheen on the surface of the pond, as well as heavily oiled shoreline rocks and crude oil in the pond. Two scavenged remains of oiled bird carcasses and an oiled grebe carcass were recovered from the pond area. The skirts of the netting over the skim pits were in need of some minor holes repair. (AR # 19)
- Y. On May 29, 2008, inspectors from EPA, USFWS, and WDEQ inspected the Facility and observed emulsified oil along the eastern shoreline and in the southeast corner of the evaporation pond. Inspectors also observed that netting on the north skim pit was sagging beneath the surface and in need of maintenance. (AR # 20)

## **V. CONCLUSIONS OF LAW**

- A. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. Wastes received by, and handled at, the Facility are "solid waste[s]" as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27).
- C. Respondent has contributed to and/or is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Facility within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.
- D. Respondent's handling, storage, treatment, transportation or disposal of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

## **VI. ORDER**

Based on the above, and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect public health and/or the environment. EPA, therefore, hereby orders Respondent to perform the

work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

## VII. WORK TO BE PERFORMED

### A. CORRECTIVE MEASURES

1. Within ten (10) calendar days of receipt of this Order, Respondent shall evaluate all corrective measures necessary at the Facility to protect wildlife (including migratory birds and endangered species), develop a Corrective Measures Work Plan ("CM Work Plan") and submit such CM Work Plan to EPA for approval.
2. The CM Work Plan shall describe:
  - a. the selected corrective measures, including but not limited to the corrective measures described below in Paragraph A.3. of this section;
  - b. an operations and maintenance plan which will result in uninterrupted effectiveness of the chosen corrective measures (to include submission of a revised site specific operations and maintenance plan); and
  - c. the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The CM Work Plan shall demonstrate that the personnel and contractor(s) possess all appropriate qualifications.
3. The corrective measures shall include at a minimum, but not be limited to:
  - a. methods for permanently and continuously eliminating contact by wildlife with any oil at and around the Skim Pits, which may include properly covering the Skim Pits with netting and surrounding with fencing (*see* AR # 4 for USFWS guidance), and plans for ongoing inspection and maintenance of the netting and fencing to prevent sagging of the netting below the surface of the ponds; as well as timely repairs in the netting and fencing, including hole repair and ensuring that the netting skirts are continuously anchored to the ground;
  - b. methods for permanently and continuously eliminating contact by wildlife with oily surfaces at the Evaporation Pond, which should include remediation of oily shorelines, and regular and effective skimming of the Pond to address floating oil sheens, thick, semi-crusted oily wastes, oily drilling mud, etc.;

- c. remediation of oil-contaminated ground surfaces; and
  - d. cleaning up and properly disposing of any oil-stained/oil-contaminated soils and other wastes generated at the Facility.
4. The CM Work Plan shall specify that the corrective measures set forth in Section VII.A.3.a.-c. above shall be implemented within ten (10) calendar days of EPA approval of the CM Work Plan.
5. EPA will notify Respondent in writing of any comments it may have on the CM Work Plan which must be incorporated into the CM Work Plan before it can be approved.
6. Respondent shall incorporate EPA's comments into the CM Work Plan and resubmit the CM Work Plan to EPA within five (5) calendar days of receipt of EPA's comments.
7. Upon receipt of Respondent's CM Work Plan with EPA comments incorporated, EPA will notify Respondent in writing of its approval, approval with modifications or disapproval of the CM Work Plan. If approved with modifications, the EPA notification correspondence will serve as an addendum to the final CM Work Plan.
8. Upon receipt of EPA's written approval or approval with modifications, Respondent shall implement the corrective measures in accordance with the procedures and schedules contained in the CM Work Plan as approved by EPA.
9. Within fifteen (15) calendar days of completing the work as set forth in the CM Work Plan as approved by EPA, Respondent shall provide a written Corrective Measures Summary Report to EPA detailing, and confirming through photographic evidence, the completion of the activities conducted pursuant to the CM Work Plan. The Corrective Measures Summary Report and photographs shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented.

**B. IMMEDIATE PUBLIC NOTICE**

1. Respondent shall promptly post notice of the endangerment at the site.

**C. EMERGENCY ACTION**

1. In the event Respondent identifies a threat to human health and/or the environment at the Facility at any time during implementation of this Order which warrants more immediate action than pursuant to any requirement of this Order,



Respondent shall orally notify the EPA Project Manager identified below not more than twenty-four (24) hours after discovery and notify EPA, USFWS and WDEQ in writing not more than ten (10) days after such discovery, summarizing the nature, immediacy and magnitude of such threat(s).

2. Proper notification, as required in this section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), as amended.
3. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat(s).
4. If EPA, USFWS or WDEQ identifies such a threat(s) at the Facility at any time during implementation of this Order, EPA will notify Respondent orally, and provide subsequent notification in writing. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat(s).
5. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless EPA does not provide to Respondent in writing, a description of such requirements within ten (10) calendar days of oral notification.

#### D. ADDITIONAL WORK

If EPA determines that additional work is necessary, EPA will inform Respondent of such additional requirements, and Respondent shall conduct such work according to EPA direction.

#### E. PUBLIC PARTICIPATION

EPA may make any work plan or other document available to the public for review and comment for an appropriate period prior to taking final action on such document.

#### F. REPORTING

1. Commencing the first full month after the effective date of this Order, Respondent shall provide EPA, USFWS and WDEQ with monthly progress reports which shall include, at a minimum, the following information:
  - a. activities conducted at the Facility in the previous month;

- b. summaries of problems encountered during the previous month and how the problems were or are being addressed;
  - c. changes in work performed at the Facility from that projected in the previous monthly progress report; and
  - d. projected work for the next reporting period.
2. These progress reports are to be submitted by the tenth calendar day of the month following the monthly reporting period.

G. CERTIFICATION

1. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of JWS. A person is a "duly authorized representative" only if: (1) the authorization is made in writing; (2) the authorization specifies either an individual or position having responsibility for overall operation of the Facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the EPA Project Manager designated below.
2. The certification shall be in the following form:

I certify that the information contained in or accompanying this **[type of submission]** is true, accurate, and complete. As to **[the/those identified portion(s)]** of this **[type of submission]** for which I cannot personally verify **[its/their]** accuracy, I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **VIII. ACCESS**

Respondent shall permit full access to EPA, USFWS, WDEQ and the County, and their authorized representatives, as may be necessary for the purposes of oversight of and implementation of this Order.

### **IX. GENERAL PROVISIONS**

- A. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.
- B. Respondent shall obtain any permits or approvals which are necessary to perform work on or outside the Facility under applicable law and shall submit timely applications and requests for any such permits and approvals.
- C. Respondent shall employ sound scientific, engineering, and construction practices and principles under this Order.

### **X. AVAILABILITY AND RETENTION OF INFORMATION**

- A. Respondent shall make available to EPA, and shall retain, during the pendency of this Order and for a period of five (5) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.
- B. After the document retention period, Respondent shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents and, upon request by EPA, shall deliver the documents to EPA.

### **XI. CONFIDENTIALITY CLAIMS**

Respondent may assert confidentiality claims pursuant to 40 C.F.R. Part 2. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, the public may be given access to such information without further notice to Respondent.

## **XII. AVAILABILITY OF ADMINISTRATIVE RECORD**

The administrative record supporting this Order shall be available for public review at the RCRA File Room, EPA Region VIII, 1595 Wynkoop, Denver, Colorado from 8 a.m. to 5 p.m., every Federal business day.

## **XIII. NOTICES, CONTACTS AND EPA PROJECT MANAGER**

Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. The following EPA person is designated as the Project Manager for EPA for this Order.

As to EPA:

Mr. Randy Lamdin  
EPA Region VIII, 8ENF-RC  
1595 Wynkoop Street  
Denver, Colorado 80202  
(303) 312-6350

As to USFWS:

Mr. Pedro Ramirez, Jr.  
Ecological Services  
Wyoming Field Office  
U.S. Fish & Wildlife Service  
5353 Yellowstone Road  
Suite 308A  
Cheyenne, Wyoming 82009  
(307) 772-2374 ext. 236

As to WDEQ:

Mr. John Wagner  
Administrator  
Water Quality Division  
Wyoming Department of Environmental Quality  
Herschler Building, 4<sup>th</sup> Floor  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002  
(307) 777-7781

If the date for submission of any item or notification required by this Order falls upon a weekend or state or Federal holiday, the time period for submission of that item or notification is extended to the next Federal working day following the weekend or holiday.

#### **XIV. RESERVATION OF RIGHTS**

- A. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary.
- B. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, including under CERCLA or any other applicable law.
- C. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable law or regulation and with any requirement of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request or require that Respondent perform additional tasks, and the right to perform any portion of the work herein.
- D. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable, State, Federal, or other law, regulation, permit, or other requirement.

#### **XV. FAILURE TO COMPLY**

Pursuant to Section 7003(b) of the Act, 42 U.S.C. § 6973(b), and 40 C.F.R. 19, any failure by Respondents to comply with this Order shall subject Respondents to civil penalties of not more than \$6,500.00 for each day of each failure to comply with this Order.

#### **XVI. OPPORTUNITY TO CONFER, AND MODIFICATION**

- A. Respondent has the opportunity confer informally with EPA concerning the terms and applicability of this Order. If Respondent desires a conference, Respondent must contact EPA Region VIII by telephone to schedule such conference within five (5) calendar days of receipt of this Order by Respondent and follow up this request in writing immediately thereafter.
- B. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

- C. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the Order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondent.
- D. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

#### **XVII. NOTICE OF INTENT TO COMPLY**

- A. Respondent shall provide, within two (2) days from receipt of this Order, or within twenty-four (24) hours from the date Respondent confers with EPA pursuant to this section of the Order, written notice to Mr. Randy Lamdin, at the address set forth above, stating whether Respondent will comply with the terms of this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondent may make in its notice, and shall not affect Respondent's obligation to implement this Order.
- B. Failure of Respondent to provide notification to EPA's Project Manager of intent to comply within this time period is a violation of this Order.

#### **XVIII. NOTICE OF NON-LIABILITY OF EPA**

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its employees, contractors, subcontractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

#### **XIX. SEVERABILITY**

If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Order shall not be affected thereby and shall remain in full force.

#### **XX. EFFECTIVE DATES**

- A. This Order shall become effective on the date this Order is filed with the Regional Hearing Clerk and mailed to Respondent.
- B. Modifications made by EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified

mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

### XXI. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's continuing obligations hereunder, including, but not limited to: compliance with all applicable laws and regulations, record retention, reservations of rights, other claims, and notice of non-liability of EPA.

#### IT IS SO ORDERED:

ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

Date: 7/25/2008

By: Sharon L. Kercher  
Sharon L. Kercher, Director  
Technical Enforcement Program

Date: 7/25/2008

By: David J. Janik  
David J. Janik  
Supervisory Enforcement Attorney