

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CI FRK

Docket No. RCRA-08-2020-0001

IN THE MATTER OF:)
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JN Trucking, Inc.
4091 West 3000 South
Roosevelt, UT 84066

Respondent.

ADMINISTRATIVE ORDER
FOR COMPLIANCE ON
CONSENT

I. INTRODUCTION

1. This Administrative Order for Compliance (AOC) is entered into voluntarily by the U.S. Environmental Protection Agency Region 8 (EPA) and Respondent, JN Trucking, Inc. (Respondent) regarding the handling and management of solid wastes at the Brennan Bottom Disposal 12 Mile Wash commercial oilfield waste disposal facility (Facility).
2. The mutual objectives of EPA and Respondent in entering into this AOC are to identify, investigate, remedy, and prevent potential endangerments to human health and the environment from Respondent's handling of certain solid waste at the Facility, and to ensure that the work ordered by EPA is designed and implemented to protect human health and the environment.
3. This AOC provides for the performance by Respondent of corrective measures necessary to protect wildlife specified in Section VIII (Order for Compliance) of this AOC.
4. EPA and Respondent acknowledge that this AOC has been negotiated by the parties in good faith and that this AOC is fair, reasonable, and in the public interest.

II. STATUTORY AUTHORITY

5. This AOC is issued under section 7003(a) and (g) of the Resource and Conservation and Recovery Act, as amended by the RCRA, 42 U.S.C. §§ 6901, 6973 (Section 7003). The undersigned official has been duly authorized to institute this action.

III. JURISDICTION

6. As more fully described below, EPA determined Respondent has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste in

a manner that may present an imminent and substantial endangerment to health or the environment.

7. EPA notified the State of Utah of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) on April 1, 2019.
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this AOC. Respondent consents to and agrees not to contest the authority or jurisdiction of the undersigned to issue or enforce this AOC and agrees not to contest the validity of this AOC, or its terms or conditions, in any action by EPA or the United States to enforce this AOC.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this AOC that are defined in RCRA will have the meaning assigned to them therein. Whenever the terms listed below are used in this AOC the following definitions apply:

9. “Acceptable” means the quality of submittals or completed work is sufficient to warrant EPA review to determine whether the submittal or work meets the terms and conditions of this AOC. Acceptability of submittals or work, however, does not necessarily imply they will be approved. Approval by EPA of submittals or work establishes those submittals were prepared, or work was completed, in a manner acceptable to EPA.
10. “AOC” means this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.
11. “Administrative Record” means the administrative record compiled by EPA in support of EPA’s issuance of this AOC. The Administrative Record is maintained at the EPA Region 8 office located at 1595 Wynkoop Street, Denver, Colorado. The Administrative Record may be updated after issuance of this AOC as EPA determines is necessary.
12. “CEI” means the RCRA compliance evaluation inspections conducted by an EPA inspector at the Facility on October 22, 2018.
13. “Day” means a calendar day unless expressly stated otherwise.
14. “Effective Date” is the date on which the EPA Regional Hearing Clerk files the fully executed AOC with an assigned docket number.
15. “Facility” means all properties and structures at the commercial oilfield waste disposal facility located in the SW1/4 of the SW1/4 of Section 19, Township 6 South, Range 21 East, Salt Lake Basin and Meridian, Uintah County, Utah, at Latitude/Longitude 40.278941, - 109.60297.
16. “RCRA” means the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

17. "Record" includes all documents, reports, data, and other information, both in paper and electronic form, generated or produced during implementation of this AOC.
18. "State" means the State of Utah.
19. "UDOGM" means the Utah Division of Oil, Gas and Mining.
20. "Work" means all the activities and requirements specified in this AOC including, but not limited to, Section VIII (Work to Be Performed).

V. STATEMENT OF THE PARTIES

21. Section VII, FINDINGS OF FACT AND VIOLATION, are made solely by the EPA. In signing this AOC, Respondent neither admits nor denies the FINDINGS OF FACT AND VIOLATION As such, and without any admission of liability, Respondent consents to the issuance of this AOC and agrees to abide by all of its conditions.
22. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND VIOLATION below in any proceeding to enforce this AOC or in any action under this AOC.

VI. PARTIES BOUND

23. This AOC will apply to and be binding upon Respondent and Respondent's agents, successors and assigns. No change in the ownership of the Facility will alter Respondent's responsibilities under this AOC unless the EPA, Respondent and the transferee agree, in writing, to allow the transferee to assume such responsibilities.
24. Respondent will provide a copy of this AOC to all contractors, subcontractors, laboratories and consultants retained to conduct or monitor any portion of the work performed pursuant to this AOC within two calendar days of the date of Respondent's receipt of this AOC, or date of retention, and will condition all such contracts on compliance with the relevant terms of this AOC.
25. Respondent will give notice to EPA at the address specified in Paragraph 51, below, 30 or more days prior to transfer of ownership or operation of the Facility.

VII. FINDINGS OF FACT AND VIOLATION

26. The Facility is a commercial oilfield waste disposal facility that receives RCRA Subtitle C-exempt exploration and production (E&P) oilfield waste for storage, treatment, and/or disposal. The Facility includes eight evaporation ponds, a landfill, a landfarm, 15 storage

tanks, and a netted slop/skim vault. The Facility has been issued approvals to operate by UDOGM.

27. EPA conducted a CEI at the Facility on October 22, 2018. During the inspection, the inspector observed:
 - a. The onsite landfill contained a large amount of water covered in oil or oily waste. The oil or oily waste covered an area of approximately 1.5 acres, or 70% of the water. The oil or oily waste in the landfill was open to access by, and a threat to, wildlife;
 - b. An open-top storage tank located near the northeastern portion of the landfill contained oil or oily waste. The open-top storage tank was not netted or covered and was open to access by, and a threat to, wildlife;
 - c. Oily waste in the slop/skim vault was exposed due to netting not covering the sides of the vault. The oil or oily waste in the slop/skim vault was open to access by, and a threat to, wildlife; and
 - d. An oil or oily sheen was present on approximately 2% of the surface of the #1 (northeastern-most) evaporation pond. The evaporation pond was open to access by, and a threat to, wildlife.
28. On August 13, 2019, Respondent notified EPA, in writing, that the following remedial actions have been taken at the Facility:
 - a. On June 20, 2019, Respondent hydro-vacuumed slop/skim vault and onsite landfill;
 - b. On July 31, 2019, Respondent installed netting for all open top storage tanks;
 - c. On February 11, 2019, Respondent installed netting on the slop/skim vault; and
 - d. From June 8, 2019, until July 19, 2019, Respondent hydro-vacuumed Evaporation Pond #1.
29. Respondent is a “person” within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
30. Wastes handled by and at the Facility are “solid waste[s]” as defined in section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
31. At all times relevant to the violations alleged herein, Respondent is the owner and/or operator of the Facility.
32. Respondent has contributed 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.

33. EPA has determined Respondent's handling of solid waste may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act.
34. The actions required by this AOC are necessary to protect human health or the environment.

VIII. ORDER FOR COMPLIANCE

35. Based on Section VII, FINDINGS OF FACT AND VIOLATION and pursuant to its authority under RCRA section 7003, the EPA orders and Respondent agrees to the following:
36. Respondent will designate a Project Coordinator responsible for administration of all Respondent's actions required by this AOC. Within 15 days of the Effective Date of this AOC, Respondent will submit the designated Project Coordinator's name, address, and telephone number in writing to EPA. To the greatest extent possible, the Respondent's Project Coordinator will be present on-site or readily available during work.
37. Respondent will evaluate all corrective measures necessary to protect wildlife, including migratory birds and threatened or endangered species, at the Facility. The corrective measures include at a minimum, but are not limited to, methods for permanently and continuously eliminating contact by wildlife with any oil or oily wastes throughout the Facility, including:
 - a. Ponded water on the landfill will be hydro-vacuumed, or removed by an equally effective method, on a weekly basis to ensure oil or oily waste does not accumulate on the surface of the ponded water or on the surface of the landfill.
 - b. Slop/Skim Vaults will be hydro-vacuumed, or removed by an equally effective method, on a monthly basis to ensure oil or oily waste does not flow to un-netted evaporation ponds;
 - c. Evaporation Ponds will be hydro-vacuumed, or removed by an equally effective method, on a monthly basis to ensure oil or oily waste does not accumulate on the surface of the liquid;
 - d. Synthetic liners at un-netted ponds must be kept oil free to prevent chronic oiling of the liquids in evaporation ponds. Respondent will conduct weekly inspections of un-netted ponds. These inspections will include:
 - i. Visual inspection of the un-netted ponds to evaluate accumulation of oil;
 - ii. Photographs taken of the condition of all un-netted ponds during the inspection;

- iii. Performance of any corrective action necessary to remove oil from un-netted ponds within 48 hours of discovery;
 - iv. Photographs taken to depict the condition of all un-netted ponds following the performance of corrective actions;
 - v. Documentation of the inspection performed will include:
 - 1. first and last name of person making the observation
 - 2. date of observation
 - 3. time of observation
 - 4. photograph, close enough to show detail;
 - 5. description of corrective action and dates corrective action performed to ensure un-netted ponds are kept oil free
 - vi. Report each inspection in the relevant Quarterly Report to EPA.
- e. Removal of oil and oily waste on ground surfaces at the Facility:
- i. Conduct and record weekly visual inspections of ground surfaces at the Facility to determine the presence of any oil or oily waste outside of slop/skim vaults, open-top tanks, the landfill, or evaporation pond;
 - ii. Clean any oily waste from ground surfaces; and
 - iii. Documentation of the inspection will include:
 - 1. first and last name of person making the observation;
 - 2. date of observation;
 - 3. time of observation; and
 - 4. description of corrective action and dates corrective action performed to remove oil and oily waste from ground surfaces.
 - iv. Report documentation of inspections in the relevant Quarterly Report to EPA.
- f. Netting installed on open top tanks on July 31, 2019, will remain in good condition without holes or tears, continuously secured to the ground to prevent access by birds or wildlife from entering the slop/skim pits, open-top tanks, and other open-top oil or oily waste containment units. Respondent will continue to conduct weekly inspections of the netting. These inspections will include:

- i. Visual inspections of netting by walking entire perimeter of each unit;
 - ii. Photographs taken of the condition of all units during the inspection;
 - iii. Performance of any corrective action necessary to repair condition of netting within 48 hours of discovery;
 - iv. Photographs taken to depict the condition of all units following the performance of corrective actions;
 - v. Documentation of the inspection will include:
 1. first and last name of person making the observation;
 2. date of observation;
 3. time of observation; and
 4. description of corrective action and dates corrective action performed.
 - vi. Report documentation of inspection in the Quarterly Report to EPA.
38. Within 14 calendar days of the Effective Date of this AOC, Respondent will submit by certified mail to EPA, with a copy to UDOGM, a work plan for the Facility (Work Plan) as described in the following paragraphs. The Work Plan will include:
 - a. A schedule with projected dates for completion of all required Work detailed above.
 - b. An operation and maintenance plan which will result in uninterrupted effectiveness of all corrective measures; and
 - c. The names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this AOC. The Work Plan, or any supplements to the Work Plan, will demonstrate that such personnel and contractor(s) possess all appropriate qualifications.
39. Within 21 calendar days of the EPA's receipt of Respondent's Work Plan, EPA will notify Respondent in writing of any comments it may have on the Work Plan, which must be incorporated into the Work Plan before it can be approved, or EPA will approve the Work Plan as submitted.
40. Respondent will incorporate EPA's comments into the Work Plan and resubmit the Work Plan to EPA within 7 calendar days of receipt of EPA's comments.
41. Upon receipt of the revised Work Plan, EPA will notify Respondent in writing of its approval, approval with modifications, or disapproval of the revised Work Plan. If approved

with modifications, EPA's modifications will serve as an addendum to the final Work Plan and will be considered part of the Work Plan.

42. Upon receipt of EPA's written approval or approval with modifications, Respondent will implement the Work Plan in accordance with the procedures and schedules contained in the Work Plan as approved by EPA.
43. EPA may determine, or Respondent may propose, that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth above. EPA will specify, in writing, the basis for its determination that any additional work is necessary.
44. Within five days after the receipt of such determination, Respondent will have the opportunity to meet or confer with EPA to discuss any additional work. EPA may modify or withdraw its request for additional work after such conference.
45. If EPA determines that Respondent must conduct additional work Respondent will submit for EPA approval a work plan for any additional work within 10 days of Respondent's receipt of EPA's determination that any additional work is necessary or according to an alternative schedule established by EPA (Additional Work Plan). EPA will review the Additional Work Plan pursuant to Section X (AGENCY REVIEW AND APPROVAL OF DELIVERABLES) below.
46. Upon EPA approval of an Additional Work Plan, Respondent will implement the Additional Work Plan in accordance with the schedule and provisions contained therein. The Additional Work Plan will be incorporated by reference into this AOC upon approval by EPA.
47. The first Quarterly Report will be due on the 10th day of the first January, April, July, or October following the Effective Date of this AOC. Respondent will provide EPA with quarterly reports which will include, at a minimum, the following information:
 - a. Documentation of all work performed pursuant to Paragraph 37(a)-(f);
 - 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.
48. Respondent will continue submitting Quarterly Reports until EPA determines that reporting can continue on a semi-annual or annual basis. The basis for reduced reporting will be contingent upon the quality and timeliness of the Work being reported to the EPA. Respondent may request such a determination at any time after four quarterly reports have been submitted.

IX. SUBMISSIONS AND NOTIFICATIONS

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

50. All submissions provided pursuant to this AOC will include the following certification:

I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment, for knowing violations.

51. Unless otherwise specified or requested by the EPA, Respondent will provide all submissions and notifications required under this AOC by first-class and electronic mail to:

Annette Maxwell, EPA Project Coordinator
U.S. EPA Region 8
1595 Wynkoop Street, 8ENF-RO-R
Denver, CO 80202-1129
Telephone: (303) 312-6068
Email: maxwell.annette@epa.gov

52. Respondent will copy UDOGM on submission of the Work Plan. Submissions to UDOGM will be directed to:

Bart Kettle
Utah Division of Oil, Gas and Mining
318 N Vernal Ave
Vernal, UT 84078-1704
Telephone: (435) 820-0862
Email: bartkettle@utah.gov

53. The EPA agrees to submit all notifications and correspondence to:

Chris Nebeker
JN Trucking, Inc.
4091 West 3000 South
Roosevelt, Utah 84066
Telephone: (435) 722-9997
Email: jntrucking@ubtanet.com

54. Any party may change the address to which future notices and submittals will be sent upon notice to the other party.

X. AGENCY REVIEW AND APPROVAL OF DELIVERABLES

55. EPA will provide Respondent with its written approval, conditional approval, approval with modification, disapproval with comments or modifications, or notice of intent to draft and approve, for any acceptable work plan, report (except progress reports), specification or schedule submitted pursuant to or required by this AOC.
56. Prior to written approval, no submittal, except progress reports, will be construed as approved and final. Oral advice, suggestions, or comments given by EPA will not constitute an official approval nor will any oral approval or oral assurance of approval be considered binding on either party, except as otherwise expressly provided for in the imminent threat provisions below.
57. Respondent will revise any submittal in accordance with EPA's written comments, and in accordance with the due date specified by EPA. Revised submittals are subject to EPA approval, approval with conditions, rejection as not acceptable, disapproval with comments or modifications, or notice of intent to draft and approve.
58. Any report, work plan, specification or schedule approved by EPA, including those drafted by EPA, will be automatically incorporated into this AOC upon EPA approval.

XI. CONFIDENTIALITY CLAIM

59. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this AOC under 40 C.F.R. Part 2 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. § 2.204(e)(4). Respondent need not submit to UDOGM any information for which a business confidentiality claim has been asserted. Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or UDOGM without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Facility conditions, sampling, monitoring or the Work performed pursuant to this AOC.

60. Respondent may assert that certain documents, records and other information are privileged under any privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents to EPA, Respondent will provide EPA with the following: the title of the document, record, or information; the date of the document, record, or information; the author's name and title; the name and title of each addressee and recipient; a description of the contents; and the privilege asserted by Respondent. No documents, reports or other information created or generated pursuant to the requirements of this AOC will be withheld on the grounds that they are privileged.
61. All data, information, and records created or maintained relating to any solid or hazardous waste handled by Respondent at the Facility will be made available to EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure pursuant to the paragraph immediately above. Respondent will have the burden of demonstrating to EPA such privilege exists at the time the privilege is asserted.
62. No claim of privilege will be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Facility that are the subject of this AOC.

XII. ACCESS AND DATA AVAILABILITY

63. Respondent will provide access to the Facility at reasonable times to EPA, EPA's contractors and oversight officials, and UDOGM. Respondent also will provide access at reasonable times to EPA, EPA's contractors and oversight officials, and UDOGM, to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Facility and the actions conducted pursuant to this AOC. Respondent will use its best efforts to gain access to areas owned by or in the possession of a person or entity other than Respondent, as necessary to implement this AOC. Such access will be provided to EPA, its contractors and oversight officials, and UDOGM. EPA, its contractors and oversight officials will notify Respondent of their presence on the Facility by presenting their credentials. All parties with access to the Facility under this paragraph will comply with all approved health and safety plans and regulations.
64. This AOC will in no way limit or otherwise affect the EPA's authority or the authority of any other governmental agency to enter the Facility, conduct inspections, have access to records, or monitor compliance to any statute, regulation, permit, or court order.
65. Pursuant to this Section, any denial of access to EPA, EPA's contractors and oversight officials, and UDOGM, at reasonable times, to any portion of the Facility where such access is related to implementation or oversight of implementation of this AOC, is a violation of this AOC and subject to the stipulated penalty provisions of this AOC.
66. Where action under this AOC is to be performed in areas owned by, or in possession of, a person or entity other than Respondent, Respondent will use its best efforts to obtain all

necessary access agreements as quickly as practicable, but in all events, within 45 days of approval of any work plan for which access is necessary or appropriate. Any such access agreement will provide for access by EPA, EPA's contractors and oversight officials, and UDOGM to move freely in order to conduct actions that EPA determines to be necessary.

67. The access agreement will specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed.
68. Respondent will provide EPA's Project Coordinator with fully executed copies of each access agreement entered into by Respondent relating to compliance with this AOC.
69. Respondent will notify EPA immediately, if after using its best efforts, Respondent is unable to obtain necessary access agreements within the time required. Best efforts, as used in this paragraph will include, at a minimum, a letter with a certification statement as provided in Paragraph 50, from Respondent to the present owner of such property requesting access agreements to permit Respondent, EPA, EPA's contractors and oversight officials, and UDOGM to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondent will, within 10 days of its receipt of a denial of access, submit in writing, a description of its efforts to obtain access. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent will undertake the Work on such property, and Respondent will reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

XIII. RECORD RETENTION

70. Respondent will preserve all documents and information, including raw data, relating to the Work performed under this AOC or relating to any solid waste or hazardous waste found at the Facility addressed by this AOC, for five years following completion of the Work required by this AOC.
71. Respondent will acquire and retain copies of all documents that relate to implementation of this AOC that are in the possession of its employees, agents, accountants, contractors or attorneys.
72. Respondent will make available to EPA all employees and persons, including contractors, who engage in activities under this AOC and ensure their cooperation with EPA with respect to this AOC upon reasonable request of EPA.
73. After the 5-year retention period and 90 days before any document or information is destroyed, Respondent will notify EPA that such documents and information are available to EPA for inspection, and upon request, will provide the originals or copies (at no cost to EPA) of such documents and information to EPA. Notification will be in writing and will reference the Effective Date, caption, and docket number of this AOC and will be addressed to Chief, RCRA Enforcement Branch, U.S. EPA Region 8, 1595 Wynkoop Street, 8ENF-RO, Denver, CO 80202-1129. In addition, Respondent will provide documents and information retained

under this Section at any time before expiration of the retention period at the written request of EPA.

74. All documents pertaining to implementation of this AOC will be stored by Respondent in a centralized location at the Facility, or an alternative location mutually approved by Respondent and EPA, to promote easy access by EPA or its representatives.

XIV. COMPLIANCE WITH OTHER LAWS

75. Respondent will perform all actions required pursuant to this AOC in accordance with all applicable local, and federal laws and regulations. Respondent will obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this AOC.

XV. DISPUTE RESOLUTION

76. Respondent will raise any disputes concerning the Work required under this AOC to the EPA Project Coordinator (excluding any decision document(s) issued by EPA), in writing, within seven days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that Respondent disputes. EPA and Respondent will expeditiously and informally attempt to resolve any disagreements.
77. The EPA and Respondent Project Coordinators will first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within three days of the first conference, Respondent will notify EPA, within five days, in writing, of its objections. Written objections will identify Respondent's objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondent.
78. EPA and Respondent then have an additional 14 days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within this period, Respondent may request in writing, within five days, a determination resolving the dispute by the EPA Region 8 Enforcement and Compliance Assurance Division Director (ECAD Director). The request should provide all information that Respondent believes is relevant to the dispute, in particular, any information that was considered during the prior dispute resolution steps, but not included in the submittal referenced in Paragraph 76 above.
79. If such request is timely submitted, EPA will issue a determination in writing. The decision of EPA will be incorporated into and become an enforceable part of this AOC and will no longer be subject to dispute pursuant to this AOC. Respondent will proceed in accordance with EPA's decision regarding the matter in dispute, regardless of whether or not Respondent agrees with the decision.
80. If Respondent does not agree to perform or does not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondent, seek enforcement of this AOC, seek stipulated penalties, or any other appropriate relief. Respondent agrees any disputes arising

under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

81. If EPA and Respondent reach agreement on the dispute at any stage, the agreement will be set forth in writing and will, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.
82. The existence of a dispute and EPA's consideration of matters placed in dispute will not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

XVI. RESERVATION OF RIGHTS

83. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this AOC, including without limitation the assessment of penalties under Section 7003(b) of RCRA.
84. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, or authorities, civil or criminal, which EPA has under RCRA, or any other statutory, regulatory, or common law authority of the United States.
85. Compliance with the terms and conditions of this AOC will not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.

XVII. FAILURE TO COMPLY WITH AOC

86. Failure by Respondent to complete the tasks described in Section VIII in the manner and time frame specified pursuant to this AOC may subject Respondent to a civil action under RCRA section 7003(a), 42 U.S.C. § 6973(a) for violation of this AOC.

XVIII. PENALTIES

87. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XXIII (Force Majeure), if Respondent fails to comply with any requirement set forth in this AOC, Respondent will pay stipulated penalties, as set forth below, upon receipt of a written demand by EPA.
88. Compliance by Respondent will include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this AOC, and in the manner required by this AOC and within the specified time schedules in and approved under this AOC. Stipulated penalties will accrue as follows:

Period of Failure to Comply	Penalty Per Violation Per Day
1st day through 14th day	\$250
15th day through 29th	\$500
30th day and each day after that	\$1000

89. All stipulated penalties will begin to accrue the first day that a violation occurs, or the first day after the date that complete performance is due, and will continue to accrue through the final day of violation. Nothing herein will prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC.
90. All stipulated penalties owed to EPA under this section will be due within 30 calendar days of receipt of a demand for payment, unless Respondent invokes the dispute resolution procedures herein. Such demand for payment will describe the noncompliance and will indicate the amount of stipulated penalties due.
91. All stipulated penalty payments will
- a. be made using any method provided on the following website:
<https://www.epa.gov/financial/makepayment>;
 - b. identify each payment with the docket number that appears on the final order;
and
 - c. within 24 hours of payment, email proof of payment to Annette Maxwell at maxwell.annette@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
92. All payments will reference the Respondent’s name and address, and the EPA Docket Number of this AOC. Copies of the transmittal of payment will be sent simultaneously to the EPA Project Coordinator at the address in Paragraph 51 and to the EPA Regional Hearing Clerk, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
93. Respondent may dispute EPA’s demand for payment of stipulated penalties for any alleged violation of this AOC by invoking the dispute resolution procedures. Stipulated penalties will continue to accrue, but are not required to be paid, for any alleged noncompliance, which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, within 21 calendar days of receipt of EPA’s written decision, Respondent will remit its payment of the stipulated penalty.

94. The assessment of stipulated penalties set forth in this section will not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this AOC.
95. EPA in its sole discretion may reduce or waive stipulated penalties.

XIX. GENERAL PROVISIONS

96. This AOC constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understanding, whether written or oral, among the parties with respect to the subject matter hereof.
97. The provisions of this AOC will be severable. Should any provision be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions will remain in full force and effect.
98. Each part will bear its own costs and attorney's fees in connection with this matter.

XX. FORCE MAJEURE

99. Respondent agrees to perform all requirements under this AOC within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure event is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this AOC despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, increased cost of performance, changes in Respondent's business or economic circumstances, or inability to attain media cleanup standards.
100. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: as it is occurring, and following the potential force majeure event such that the delay is minimized to the greatest extent possible.
101. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondent will orally notify EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. Such notice will: identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; provide Respondent's rationale for attributing such delay to a force majeure event; state the measures taken, or to be taken, to prevent or minimize the delay; estimate the timetable for implementation of those measures; and state whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent will undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay will waive any claim of force

majeure by Respondent. Respondent will be deemed to have notice of any circumstances of which its contractors had or should have had notice.

102. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions will not alter Respondent's obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.
103. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke dispute resolution, and will follow the procedures set forth in Section XVI (Dispute Resolution). In any such proceeding, Respondent will have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Respondent's best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section. If Respondent satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

XXI. TOLLING AGREEMENT

104. Effective upon signature of this AOC by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date Respondent completes the tasks described herein, will not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the FINDINGS OF FACT AND VIOLATION, and that, in any action brought by the United States related to the FINDINGS OF FACT AND VIOLATION, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

XXII. EFFECTIVE DATE AND TERMINATION

105. This AOC will be effective upon filing with the Regional Hearing Office.
106. Upon full performance of its obligations under this AOC, Respondent may request in writing that the EPA terminate this AOC. In seeking termination, Respondent will demonstrate that it has satisfactorily completed all of the actions required by this AOC. The EPA will evaluate any such request and terminate the AOC if it agrees that all of the required actions have been successfully completed.

XXIII. SIGNATORIES

107. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this AOC.
108. This AOC may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the Parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; and signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this AOC.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
Complainant.**

Date: 10/10/19

By: 
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**BRENNAN BOTTOM DISPOSAL 12 MILE WASH
JN TRUCKING, INC.,
Respondent.**

Date: 10-10-2019 By:


Chris Nebeker
JN Trucking, Inc.
4091 West 3000 South
Roosevelt, Utah 84066