

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Docket No. RCRA-08-2020-0003

FILED  
EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_  
IN THE MATTER OF: )

RN Industries, Inc. )  
P.O. Box 1168 )  
Vernal, UT 84078 )

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

ADMINISTRATIVE ORDER  
ON CONSENT  
PURSUANT TO  
SECTION 7003 OF RCRA

**I. INTRODUCTION**

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency Region 8 (EPA) and Respondent, RN Industries, Inc. (Respondent) and is issued pursuant to authority granted to the Administrator of EPA under section 7003 of the Resource Conservation and Recovery Act, as amended 42 U.S.C. § 6901, 6973 (Section 7003).
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 Respondent's commercial oilfield waste disposal facility known as the RNI Seep Ridge facility ("Facility" as defined below), and to ensure that the work ordered by EPA hereunder 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 (Work to Be Performed), including any additional work that may be required under Section VIII.38 (Additional Work) of this AOC.
4. Respondent's participation in this AOC shall not constitute or be construed as an admission of liability. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this AOC (Sections V and VI, Findings of Fact and Conclusions of Law).
5. 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. JURISDICTION

6. As more fully described below, EPA has 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 Ute Tribe of the Uintah and Ouray Reservation (Tribe) of this action pursuant to §7003(c) of RCRA, 42 U.S.C. § 6973(c), on April 22, 2019.
8. EPA notified the State of Utah of this action pursuant to § 7003(a) of RCRA, 42 U.S.C. § 6973(a) on April 1, 2019.
9. 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.

## III. PARTIES BOUND

10. This Order shall apply to and be binding upon Respondent, its employees, agents, successors and assigns.
11. 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 calendar days of the date of Respondent's receipt of this order, or date of retention, and shall condition all such contracts on compliance with the relevant terms of this Order.
12. Respondent shall give notice to EPA 30 or more days prior to transfer of ownership or operation of RN Industries or the Facility.

## IV. DEFINITIONS

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

13. "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 approvable. Approval by EPA of submittals or work, however, establishes those submittals were prepared, or work was completed, in a manner acceptable to EPA.

14. "AOC" means this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.
15. "Administrative Record" means the administrative record compiled by EPA in support of EPA's issuance of this Order. The Administrative Record is maintained at the EPA Region 8 offices located at 1595 Wynkoop Street, Denver, CO. The Administrative Record may be updated after issuance of this AOC as EPA determines is necessary.
16. "CEI" means the RCRA compliance evaluation inspections conducted by an EPA inspector at the Facility on or about October 25, 2018.
17. "Day" means a calendar day unless expressly stated otherwise.
18. "Effective Date" is the date on which the EPA Regional Hearing Clerk files the fully executed AOC with an assigned docket number.
19. "Facility" means all properties and structures at the commercial oilfield waste disposal facility in Uintah County, Utah, Section 36, Township 10 South, Range 20 East, Uintah County, Utah, Latitude/Longitude 39.903345, -109.61106.
20. "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.*
21. "Record" includes all documents, reports, data, and other information, both in paper and electronic form, generated or produced during implementation of this AOC.
22. "State" means the State of Utah.
23. "Tribe" means the Ute Tribe of the Uintah and Ouray Reservation.
24. "UDOGM" means the Utah Division of Oil, Gas and Mining.
25. "Work" means all the activities and requirements specified in this AOC including, but not limited to, Section VIII (Work to Be Performed).

## **V. FINDINGS OF FACT**

26. The Facility is a commercial oilfield waste disposal facility that manages solid waste generated off-site from oil and gas exploration and production activities. The primary means of liquids disposal at the Facility is through evaporation. The Facility includes a slop/skim pit and five evaporation ponds.
27. The Facility receives produced water containing oil from oil field production operations, which is trucked into the Facility and deposited into a slop/skim pit. Oil rises to the surface of the pit and separates from the water. The separated oil is removed from the pit with a vacuum truck and stored in storage tanks. The process water is gravity-drained into the

southernmost evaporation pond through an underground pipe. Water is manually pumped from the southernmost pond to the other evaporation ponds as needed. The water is disposed of through evaporation.

28. The Facility is located three miles southeast of Willow Creek, ten miles southeast of the Green River, and twelve miles southeast of the Pariette Wetlands Habitat Management Area. The Green River is identified by the U.S. Fish & Wildlife Service as a riparian and habitat corridor and is a preferred migration and travel pathway for a variety of bird species, especially aquatic-dependent species such as waterfowl, herons, cranes, shorebirds and neotropical migratory songbirds. The Pariette Wetlands and tributary streams adjacent or flowing into the Green River, such as Willow Creek, provide additional habitat and travel pathways for these species, as well as habitat connectivity to uplands further away from the river. The Pariette Wetlands is the largest BLM wetland development in Utah and provides seasonal habitat for waterfowl and other migratory bird species.
29. EPA conducted a CEI at the Facility on October 25, 2018. During the CEI, the inspector observed four whole bird carcasses and remains of an estimated 10 or more additional bird carcasses at the evaporation pond located in the southeast of the Facility. The EPA inspector also observed gapping between the netting and the ground around the slop/skim pit.

## **VI. CONCLUSIONS OF LAW**

30. Based on the Findings of Fact set forth above and other information in the Administrative Record supporting this AOC, EPA has determined that:
31. Respondent is a "person" within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
32. 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).
33. 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.
34. 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.
35. EPA takes this action pursuant to RCRA § 7003 having determined that the issuance of this AOC is necessary to protect human health or the environment.

## **VII. ORDER ON CONSENT**

36. Based upon the Administrative Record and the Findings of Fact (Section V) and Conclusions of Law (Section VI) set forth above, and pursuant to its authority under RCRA

§ 7003, EPA orders and the Respondent agrees to the following provisions of this AOC, including, all appendices to this AOC and all documents incorporated by reference into this AOC.

## VIII. WORK TO BE PERFORMED

### 37. Designation of Project Coordinator

- A. Respondent shall 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 shall 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 shall be present on-site or readily available during site work.
- B. EPA has designated Kristin McNeill of the Enforcement & Compliance Assurance Division as its Project Coordinator. Respondent shall direct all submissions required by the Consent Order to EPA. Submissions to EPA shall be directed to:

Kristin McNeill, 8ENF-RO-R  
US EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6278  
Email: mcneill.kristin@epa.gov

- C. Respondent shall copy the Utah Division of Oil, Gas and Mining (UDOGM) on all submissions unless specifically excepted in this AOC. Submissions to UDOGM shall 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

### 37. Corrective Measures

- A. Respondent shall evaluate all corrective measures necessary to protect wildlife, including migratory birds and threatened or endangered species, at the Facility. The corrective measures shall include at a minimum, but not be limited to, methods for permanently and continuously eliminating contact by wildlife with any oily wastes or other wastes that result in wildlife injury or mortality throughout the Facility, including:
- 1) properly covering the slop/skim pit with netting that is continuously secured to the ground in a manner that prevents access by birds and other wildlife;

- 2) plans for ongoing inspection and maintenance of slop/skim pit netting and fencing to prevent sagging of the netting below the surface of the pit as well as timely repairs to the netting and fencing;
  - 3) installing mitigation measures to deter birds from contacting the evaporation ponds; and
  - 4) conducting at a minimum once daily during normally staffed business hours, monitoring for deceased birds at the evaporation ponds. If live but injured birds are found, contact USFWS immediately. In the event that only one bird is observed to be deceased in or on the liner or berm of the pond, log and photograph the mortality. In the event that two or more birds are observed to be deceased:
    - a) log and photograph each mortality individually.
    - b) if deaths occurred within last 24 hours, contact the U.S. Fish and Wildlife Service (USFWS) immediately and follow the protocol to submit for necropsy.
    - c) within 48 business hours, notify EPA that two or more deceased birds have been observed and if USFWS has been contacted.
- B. Within 14 calendar days of the effective date of this Order, Respondent shall 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.
- C. The Work Plan shall describe:
- 1) All work conducted as of the date of transmittal of the Work Plan to abate threats to wildlife at the Facility, as well as changes in operation of the Facility that have already been implemented to abate threats to wildlife;
  - 2) In detail, the corrective measures selected by Respondent after the evaluation required under paragraph VIII.2.A. above; and
  - 3) A detailed schedule for completion of all remaining work described in the Work Plan.
- D. The Work Plan shall include:
- 1) An operation and maintenance plan which will result in uninterrupted effectiveness of all corrective measures; and
  - 2) The names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The Work Plan, or any supplements to the Work Plan, shall demonstrate that such personnel and contractor(s) possess all appropriate qualifications.
- E. 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. If EPA does not notify Respondent within 21 calendar days, the Work Plan will be deemed approved.

- F. If EPA affords Respondent an opportunity to incorporate EPA's comments, Respondent shall incorporate EPA's comments into the Work Plan and resubmit the Work Plan to EPA within seven calendar days of receipt of EPA's comments.
- G. Upon receipt of the revised Work Plan, EPA will notify Respondent in writing of its approval, approval with modifications, or disapproval of the Work Plan. If approved with modifications, EPA notification correspondence shall serve as an addendum to the final Work Plan and shall be considered part of the Work Plan.
- H. Upon receipt of EPA's written approval or approval with modifications, Respondent shall implement the Work Plan in accordance with the procedures and schedules contained in the Work Plan as approved by EPA.
- I. If EPA concludes it must disapprove the Work Plan after Respondent has had the opportunity to incorporate EPA's comments, EPA may prepare a Work Plan, which EPA will transmit to Respondent as the approved Work Plan. EPA may also request that a court order Respondent to take action as is necessary to protect health or the environment at the Facility.
- J. Within 15 calendar days of completing the work as set forth in the approved Work Plan, Respondent shall provide a written Corrective Measures Summary Report ("CMSR") to EPA detailing and certifying the completion of the activities conducted pursuant to the Work Plan, including confirmation through photographic evidence. The CMSR, with photographs, shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented.
- K. EPA shall notify Respondent as soon as possible after receipt of the CMSR whether the CMSR is accepted and all work, except ongoing operations and maintenance work, is completed under this Order.

### **38. Additional Work**

- A. 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 in paragraph I.2. above. EPA will specify, in writing, the basis for its determination that any additional work is necessary.
- B. Within five days after the receipt of such determination, Respondent shall 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.
- C. If EPA determines that Respondent must conduct additional work Respondent shall submit for EPA approval a work plan for any additional work within ten 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 shall review the Additional Work Plan pursuant to Section IX below.

- D. Upon EPA approval of an Additional Work Plan, Respondent shall implement the Additional Work Plan in accordance with the schedule and provisions contained therein. The Additional Work Plan shall be incorporated by reference into this AOC upon approval by EPA.

### **39. Reporting**

- A. Commencing the first full month after the effective date of this Order, Respondent shall provide EPA and UDOGM with monthly progress reports which shall include, at a minimum, the following information:
- 1) Activities conducted at the Facility in the previous month;
  - 2) Summaries of problems encountered during the previous month and how the problems were or are being addressed;
  - 3) Changes in work performed at the Facility from that projected in the previous monthly progress report;
  - 4) Projected work for the next reporting period; and
  - 5) Monitoring log for deceased birds. If no mortalities occurred during the monitoring period, include a comment that no mortalities were observed. Logs shall include the following minimum information:
    - a) first and last name of person making the observation
    - b) date of observation
    - c) time of observation
    - d) photograph, close enough to show detail
    - e) latitude/longitude, if available
    - f) type of bird, if known
    - g) approximate size of bird (small, medium or large)
    - h) carcass condition (partial, decomposed, whole, newly dead, etc.)
- B. These progress reports must be submitted by the tenth calendar day of the month following the monthly reporting period.
- C. The reporting requirement in VIII.39.A. becomes a quarterly (calendar) reporting requirement after EPA's acceptance of the CMSR. The first quarterly report will be due on the tenth day of the first January, April, July, or October after the CMSR is accepted. Recent photographs showing the up-to-date status of netting and evaporation ponds shall be included at minimum twice annually.



- D. Respondent shall continue submitting quarterly reports until EPA determines that reporting can continue on a semi-annual or annual basis. Respondent may request such a determination at any time after two quarterly reports have been submitted.

#### **IX. AGENCY REVIEW AND APPROVAL OF DELIVERABLES**

40. EPA may reject any submittal that EPA determines is not Acceptable. Submittal of a document not Acceptable is a violation of this AOC unless such document is resubmitted prior to the due date for such submittal, or other due date agreed to by EPA, and EPA determines that the submittal is Acceptable.
41. 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.
42. Prior to written approval, no submittal, except progress reports, shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA will not constitute an official approval, nor shall 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. Written approval can be provided through email.
43. Respondent shall 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.
44. Any report, work plan, specification or schedule approved by EPA, including those drafted by EPA, shall be automatically incorporated into this AOC upon EPA approval.

#### **X. DOCUMENT CERTIFICATION AND CONFIDENTIALITY CLAIM**

45. 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 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.
46. 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:

Date:

47. 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.
48. 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 shall 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 shall be withheld on the grounds that they are privileged.
49. All data, information, and records created or maintained relating to any solid or hazardous waste handled by Respondent at the Facility shall 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 shall have the burden of demonstrating to EPA such privilege exists at the time the privilege is asserted.
50. No claim of privilege shall 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.

## XI. ACCESS AND DATA AVAILABILITY

51. Respondent shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials, and UDOGM. Respondent also shall 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 Site and the actions conducted pursuant to this AOC. Respondent shall 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 shall be provided to EPA, its contractors and oversight officials, and UDOGM. EPA, its contractors and oversight officials shall notify Respondent of their presence on the Site by presenting their credentials. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans and regulations.
52. 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.
53. 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 shall 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 shall 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.
54. The access agreement shall specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed.
55. Respondent shall provide EPA's Project Coordinator with fully executed copies of each access agreement entered into by Respondent relating to compliance with this AOC.
56. Respondent shall 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 shall include, at a minimum, a certified letter 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 shall, 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 shall undertake the Work on such property, and Respondent shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

57. Nothing in this AOC shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to, RCRA and CERCLA.

## **XII. RECORD RETENTION**

58. Respondent shall 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.
59. Respondent shall 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.
60. Respondent shall 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.
61. After the 5-year retention period and 90 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no cost to EPA) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this AOC and shall be addressed to:

RCRA Enforcement Branch Chief  
US EPA Region 8, 8ENF-RO-R  
1595 Wynkoop Street  
Denver, CO 80202-1129

In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the retention period at the written request of EPA.

62. All documents pertaining to implementation of this AOC shall 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.

## **XIII. COMPLIANCE WITH OTHER LAWS**

63. Respondent shall perform all actions required pursuant to this AOC in accordance with all applicable local, Tribal, and federal laws and regulations. Respondent shall 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.

#### XIV. DISPUTE RESOLUTION

64. Respondent shall 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 shall expeditiously and informally attempt to resolve any disagreements.
65. The EPA and Respondent Project Coordinators shall 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 shall notify EPA, within five days, in writing, of its objections. Written objections shall identify Respondent's objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondent.
66. 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 in paragraph B above.
67. If such request is timely submitted, EPA shall issue a determination in writing. The decision of EPA shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondent shall proceed in accordance with EPA's decision regarding the matter in dispute, regardless of whether or not Respondent agrees with the decision.
68. 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.
69. If EPA and Respondent reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.
70. The existence of a dispute and EPA's consideration of matters placed in dispute shall 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.

## XV. PENALTIES

71. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVI (Force Majeure), in the event that Respondent fails to comply with any requirement set forth in this AOC, Respondent shall pay stipulated penalties, as set forth below, upon receipt of a written demand by EPA.
72. Compliance by Respondent shall 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 Consent Order and within the specified time schedules in and approved under this AOC. Stipulated penalties shall 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

73. All stipulated penalties shall begin to accrue the first day that a violation occurs, or the first day after the date that complete performance is due, and shall continue to accrue through the final day of violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC.
74. All stipulated penalties owed to EPA under this section shall 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 shall describe the noncompliance and shall indicate the amount of stipulated penalties due.
75. All stipulated penalty payments shall
- 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 Kristin McNeill and Erin Agee at [mcneill.kristin@epa.gov](mailto:mcneill.kristin@epa.gov) and [agee.erin@epa.gov](mailto:agee.erin@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).
76. All payments shall reference the Respondent’s name and address, and the EPA Docket Number of this AOC. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator at the address in Section VIII.36.B. and to the EPA Regional Hearing Clerk, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

77. 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 shall 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 shall remit its payment of the stipulated penalty as set forth in paragraph 5 above.
78. The assessment of stipulated penalties set forth in this section shall 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.
79. EPA in its sole discretion may reduce or waive stipulated penalties.

#### **XVI. FORCE MAJEURE**

80. 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.
81. 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.
82. 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 shall orally notify EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. Such notice shall: 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 shall 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 shall waive any claim of force majeure by Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

83. 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 shall not alter Respondent's obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.
84. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke dispute resolution, and shall follow the procedures set forth in Section XIV (Dispute Resolution). In any such proceeding, Respondent shall 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.

## **XVII. RESERVATION OF RIGHTS**

85. Notwithstanding any other provisions of this AOC, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such waste, on, at, or from the Facility, including but not limited to, the right to bring enforcement actions under RCRA, and any other applicable statutes or regulations.
86. 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.
87. 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.
88. This AOC is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees EPA's approval of Work pursuant to this AOC does not constitute a warranty or representation that such Work will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this AOC shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, Tribal, state, or federal laws and regulations.
89. Notwithstanding any other provision of this AOC, Respondent expressly agrees no action or decision by EPA pursuant to this AOC, including without limitation, decisions of EPA, or



any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this AOC.

90. Respondent agrees not to contest the validity or terms of this AOC, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms or seek penalties for its violation.
91. Respondent retains its right to assert claims against any third parties with respect to Work, or any other matter addressed by this AOC.

### **XVIII. OTHER CLAIMS**

92. The United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent, or its agents or contractors, in implementation, or violation, of this AOC.
93. The United States and EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC.
94. Respondent waives all claims against the United States relating to or arising out of conduct of this AOC, including, but not limited to, contribution and counterclaims.
95. Respondent shall bear its own litigation costs and attorneys' fees.
96. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defense contending that the claims raised by the United States in the subsequent proceeding were, or should have been, raised in the present matter.

### **XXI. INDEMNIFICATION**

97. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action arising from, on account of, or in any way relating to, acts or omissions of Respondent, Respondent's directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC; and for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of Work, including claims on account of construction delays.

## **XXII. MODIFICATION OF THIS AOC**

98. Except for modification of Work, this AOC may only be modified by the mutual agreement of EPA and Respondent. Any agreed modifications shall be in writing, be signed by both parties, have as their effective date the date on which they are signed by EPA, and be incorporated into this AOC.
99. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as required by this AOC, and to comply with all requirements of this AOC, unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.
100. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of the Work Plan, Respondent shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this AOC.

## **XXIII. SEVERABILITY**

102. If any court with jurisdiction issues an order that invalidates any provision of this AOC or finds that Respondent has sufficient cause not to comply with one or more provisions of this AOC, Respondent shall remain bound to comply with all provisions of this AOC not invalidated or determined to be subject to a sufficient cause defense by the court's order.


## **XXIV. EFFECTIVE DATE AND TERMINATION**

101. This AOC will be effective on the date the final order is filed by the EPA Regional Hearing Clerk.
102. 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.

**XXVI. SIGNATORY AUTHORITY**

The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this AOC and to bind the party it represents to this document.

Agreed this 28 day of October, 2019

By:   
Signature

Austin Waddie  
Print Name

Operations Manager  
Title

355 S. 1000 E. Vernal, UT 84078  
Company Address

It is so ORDERED and Agreed this 6 day of November, 2019.

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

EFFECTIVE DATE: NOVEMBER 13, 2019