

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 25 JUN 08 3:39
REGION 8

IN THE MATTER OF:
Bio Energy of Colorado Site
Adams County, Colorado

Bio Energy of Colorado LLC,
Jamesway Cartage, Inc.
Respondents

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIVITIES

U.S. EPA Region 8
CERCLA
Docket No. CERCLA-08-2008-000

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §9606(a)

this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on September 18, 2008, by the Director of the Preparedness, Assessment and Emergency Response Program, EPA Region 8, or his delegate, and all attachments thereto. The Action Memorandum is attached as Appendix A.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- d. "Effective Date" shall be the effective date of this Order as provided in Section XVII.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. "CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.
- g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- h. "Order" shall mean this Unilateral Administrative Order for Removal Response Activities and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.
- i. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.
- j. "Parties" shall mean EPA and Respondents.
- k. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- l. "Respondents" shall mean Bio Energy of Colorado, LLC and Jamesway Cartage, Inc.

south of the Bioenergy Facility, near Burlington Northern and Santa Fe Railroad property. The Fire Department used pH paper on the product spilled and found that the material had a pH of 1.

12. EPA's On-Scene Coordinator (OSC) responded on April 2, 2008 and observed what appeared to be an oil spill near a stormwater drain. The OSCs returned on April 8, 2008 to collect screening level soil samples and observed Bio Energy employees pumping material from an on-site storage tank into a railcar. Sampling of the rail cars indicated that the material in Rail Car #2 contained an aqueous phase acidic material with a pH of 1 and that Rail Car #3 contained an aqueous phase caustic material with a pH of 13. The railcars are constructed of unlined steel and are not compatible with strongly corrosive material.

13. Aqueous materials having or exhibiting pH levels less than or equal to 2 or greater than or equal to 12.5 are defined as a characteristic hazardous waste because of the characteristic of corrosivity. Material with a PH of 1 was found in soils on Site near a stormdrain located south of the Jamesway property and in railcars, which are incompatible with caustic material, at the Site. The storage of corrosive material in rail cars posed a threat of a catastrophic release of material. This material has since been pumped into compatible poly tanks on Site. However, the unsecured Site, with a history of vandalism, pose a threat of direct contact with corrosive material.

14. Corrosive wastes pose a threat of exposure through direct dermal contact and can be poisonous by inhalation as a corrosive irritant to skin, eyes and mucous membranes. Corrosive material constitutes a serious fire hazard and can be a very powerful oxidizing agent.

15. The Site has not been listed on the National Priorities List (NPL), to date, and has not been referred to the Site Assessment Program for further assessment and investigation.

16. Respondent, Jamesway, is a Colorado corporation in noncompliance standing, whose address is 821 West 56th Avenue, Denver, Colorado 80216. James Langely is the registered agent for Jamesway. Jamesway is the owner of the Site.

17. Respondent, Bio Energy is a Colorado corporation in good standing, whose registered agent is Carrier Connect, LLC at 4875 National Western Drive, Denver, CO 80216. Bio Energy formed in August 2004 and began operations at the facility at 821 West 56th Avenue in November 2006. Bio Energy operated the facility at the time of disposal of hazardous substances.

18. There have been no prior EPA responses at this Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

19. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Bio Energy Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

VI. ORDER

20. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

21. Notice of Intent to Comply

Each Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such notice shall be given no later than 4:00 P.M. (MDT) on September 30, 2008. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

22. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal action themselves or retain a contractor to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the name(s) and qualification(s) of such contractor within 2 days of the effective date of this Order. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least 2 days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the removal action. If EPA disapproves of a selected contractor or Respondents, Respondents shall retain a different contractor or notify EPA that it will perform the removal action itself within 2 days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within 2 days of EPA's disapproval.

23. Within 2 days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within 2 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

Response; found at 29 CFR Part 1910. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

28. Quality Assurance and Sampling:

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall only use laboratories that have a documented quality system which complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the quality system requirements.

b. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing actions under this Order. Respondents shall notify EPA not less than 2 days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

29. Reporting

a. Respondents shall submit notice to the OSC within 24 hours of the shipment of wastes from the Site. Respondents shall provide copies of the waste manifests to the OSC within 2 days of Respondent's receipt of such manifests.

b. Any Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section Four of this Order - Access to Property and Information.

32. Record Retention, Documentation, Availability of Information

a. Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year period and 30 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

b. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

33. Off-Site Shipments:

a. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain the Federal Agencies' certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

34. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws.

subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

IX. RESERVATION OF RIGHTS

39. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, 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 on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

X. OTHER CLAIMS

40. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

41. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

42. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XI. MODIFICATIONS

43. Modifications to any plan or schedule or the attached EPA Statement of Work may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 2 days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the

Karen S. Kellen, Senior Enforcement Counsel, at 303/312-6518, Kellen.karen@epa.gov, 1595 Wynkoop St., Denver, CO 80202-1129.

XV. INSURANCE

50. At least five (5) days prior to commencing any on-site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of \$1million dollars, combined single limit. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.


XVI. SEVERABILITY

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

XVII. EFFECTIVE DATE

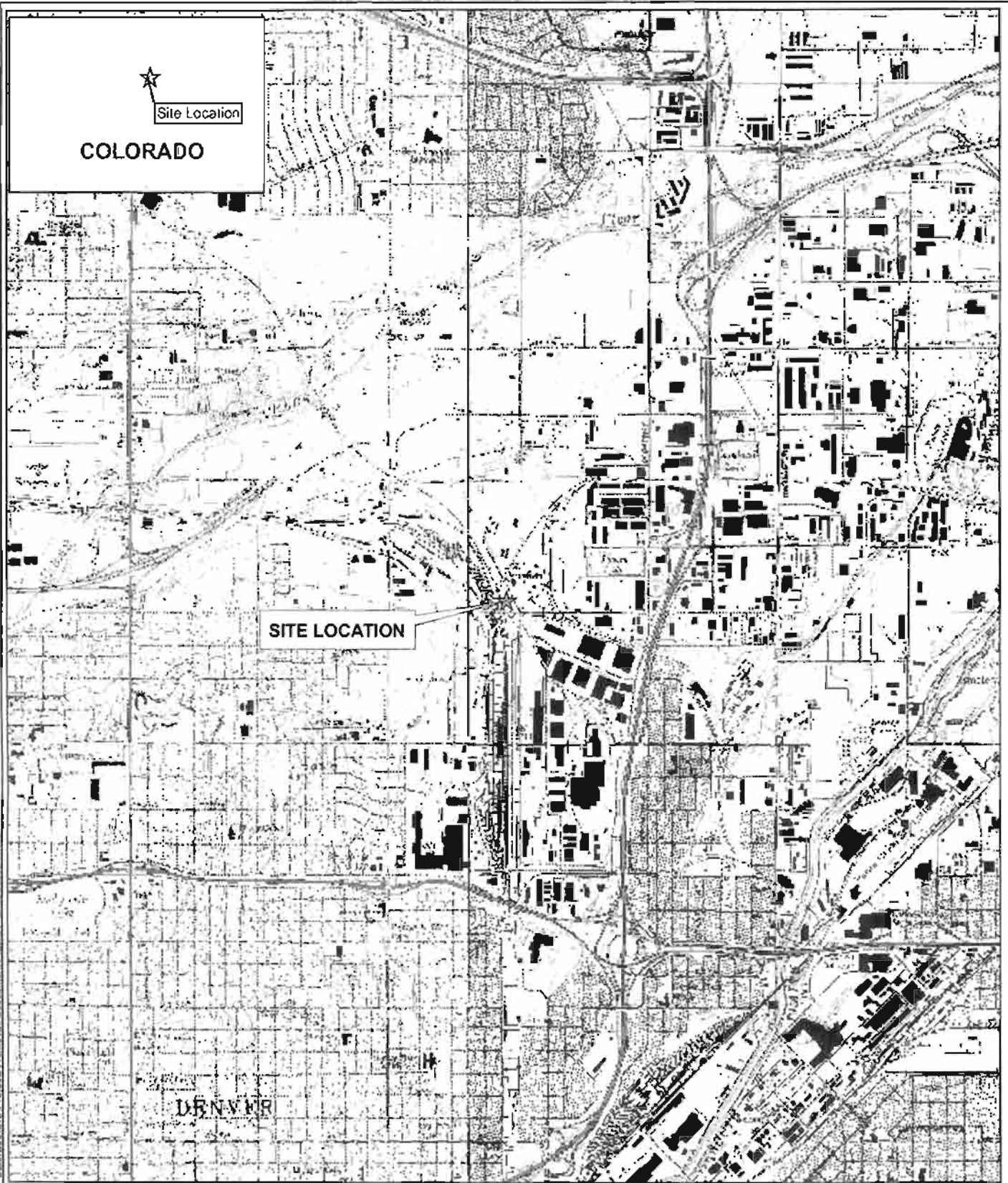
52. This Order shall be effective upon signature by the Director of the Preparedness, Assessment and Emergency Response Program, Office of Ecosystem Protection and Remediation unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the day of the conference unless modified in writing by EPA.

IT IS SO ORDERED

BY:  DATE: 9/25/08

Name
David Ostrander, Director
Preparedness, Assessment and Emergency Response Program
Office of Ecosystem Protection and Remediation
Region 8
U.S. Environmental Protection Agency

EFFECTIVE DATE: 9/30/08



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URS
OPERATING SERVICES



Sources: Airphoto USA, 2006-09-01

TDD Title: **BioEnergy Of Colorado**

TDD County: ADAMS

TDD: 0804-04

TDD State: CO

Date: 08 2008

Figure No

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Figure Title:

Site Location