

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Received by

Docket No. RCRA-08-2020-0005

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:

**Green’s Salvage
7716 BIA Route 1
Wolf Point, MT 59201**

Respondent.

**ADMINISTRATIVE ORDER
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, Green’s Salvage (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 the handling of certain solid waste at the Green’s Salvage property located at 7716 BIA Route 1, Wolf Point, Montana 59201 (Facility), 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 work necessary to protect human health and the environment specified in Section VIII (Work to Be Performed), including any additional work that may be required under Section VIII E (Additional Work) of this AOC.
4. Respondent’s participation in this AOC is not an admission of liability. Respondent neither admits nor denies the factual allegations and legal conclusions in this AOC.
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

1. 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.
2. EPA notified the Assiniboine and Sioux Tribes of the Fort Peck Reservation (Tribes) of this action pursuant to Section 7003(c) of RCRA, 42 U.S.C. Section § 6973(c), on January 6, 2020.
3. EPA notified the State of Montana of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) on March 6, 2020.
4. Respondent agrees to undertake and complete all actions required by this AOC. Respondent 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

1. This AOC applies to and binds Respondent, its employees, agents, successors and assigns.
2. Respondent will give notice to EPA 30 or more days prior to transfer of ownership or operation, or cessation of operations of the Facility.

IV. DEFINITIONS

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

“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, CO 80202.

“Day” means a calendar day unless expressly stated otherwise.

“Effective Date” is the date on which the hearing clerk files the final order.

“Facility” means all properties and structures at the auto salvage facility located at 7716 BIA Route 1, Wolf Point, Roosevelt County, Montana 59201.

“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.*

“Tribes” mean the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

“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

1. The Facility is an auto salvage yard that receives used automobiles and their parts. The Respondent stores used oil, gasoline, and other automobile fluids, used tires, mercury switches, and automobile batteries, among other automobile parts, at the Facility.
2. The Facility is located approximately five miles outside the Town of Wolf Point, Montana and the western part of the Facility is located in a floodplain. The runoff from the floodplain flows into an irrigation ditch, which ultimately feeds into the Missouri River.
3. EPA issued an information request to the Respondent on March 10, 2016, and the Respondent responded on April 15, 2016. The information the Respondent submitted documented that used tires, mercury switches, batteries, and fluids were being stored at the Facility in a manner that may present risk of fire, propagation of disease-carrying insects, and contamination to the soils in the floodplain and the water in the irrigation ditch.

VI. CONCLUSIONS OF LAW

1. Based on the Findings of Fact set forth above and other information in the Administrative Record supporting this AOC, EPA has determined that:
2. Respondent is a “person” within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
3. 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).
4. 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.
5. 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.
6. EPA takes this action pursuant to Section 7003 having determined that the issuance of this AOC is necessary to protect human health or the environment.

VII. ORDER ON CONSENT

Based upon the Administrative Record, the Findings of Fact, and Conclusions of Law, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered by EPA. Respondent shall comply with all provisions of this AOC.

VIII. WORK TO BE PERFORMED

1. EPA Project Coordinator

EPA has designated Linda Jacobson of the Enforcement & Compliance Assurance Division as its Project Coordinator. Respondent will direct all submissions required by the AOC to:

Linda Jacobson, 8ENF-RO-R
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6503
Email: jacobson.linda@epa.gov

Respondent will copy the Tribes on all submissions unless specifically excepted in this AOC. Submissions to the Tribes shall be directed to:

Wilfred Lambert
P.O. Box 1027
Poplar, Montana 59255
Telephone: (406) 768-2322
Email: wlambert@fortpecktribes.net

2. Work to Be Performed

A. Within 30 days of the effective date of this AOC, Respondent will submit a proposed schedule (Schedule) for EPA's approval to conduct the work necessary to protect human health and the environment at the Facility. The Schedule will, at a minimum, address the following items:

- 1) Management of any tires removed from vehicles in a manner to minimize the risk of fires, which will include:
 - i. Isolating any existing removed tires from weeds;
 - ii. Establishing and maintaining a fire break around the perimeter of the existing tires;
 - iii. Creating a stand-alone tire pile for the purpose of temporarily storing newly received used tires until they can be properly removed offsite or sold;
 - iv. A written proposal for long-term management of the tire pile, including proper disposal or sale, submitted with the Schedule.

- 2) Mercury switches removed intact or mercury pellets encased in metal and removed from switch units will be managed as “Universal Waste” in accordance with 40 C.F.R. § 273.13(c) through § 273.18. Specifically, but not exclusively, Respondent will:
 - i. Store the waste in a closed container labeled as “Universal Waste-Mercury-Containing Equipment”;
 - ii. Write the date on which Respondent begins to collect and store switches in each container;
 - iii. Ensure that storage does not exceed the 1-year storage limit of 40 C.F.R. § 273.15(a).
- 3) Respondent will ensure any containers used to store used oil are labeled or marked clearly with the words “Used Oil”, pursuant to 40 C.F.R. § 279.22(c).
- 4) Upon detection of a release of used oil to the environment, Respondent will stop the release, contain the released used oil, clean up and properly manage the released used oil and other materials, pursuant to 40 C.F.R. § 279.22(d).
- 5) Respondent will manage the intact spent lead acid batteries to be reclaimed, pursuant to 40 C.F.R § 266, Subpart G.
- 6) Should a battery leak onto the ground, Respondent will contain all releases and determine whether any material is a hazardous waste.
- 7) Respondent will recycle batteries and maintain bills of lading or receipts for all batteries recycled.
- 8) Respondent will employ the following best management practices:
 - i. store batteries indoors if possible and away from flammable liquids, ignition sources, and drains;
 - ii. Avoid stacking batteries more than three high;
 - iii. Keep a neutralizing agent, such as baking soda, nearby in case of leaks or spills;
 - iv. Store any batteries kept outdoors on an impermeable surface such as concrete with secondary containment and sheltered from the rain to prevent acid runoff.
- 9) Respondent will perform a hazardous waste determination, pursuant to 40 C.F.R. § 262.11, for all fluids no later than three days after removal from a vehicle.
- 10) Any removed fluids, including oils, gasoline, and anti-freeze must be stored in closed, labeled containers compatible with the liquids they are storing, pursuant to 40 CFR § 265.31, until appropriate disposal or reuse.
- 11) If any of the fluids are hazardous, such as anti-freeze contaminated with metals or unusable gasoline, they must be labeled as hazardous waste, inspected weekly, and stored no longer than the allowed storage timeframe based on the facility’s generation status until properly disposed pursuant to 40 C.F.R. § 262.10(a)(3).
- 12) Respondent will remove all vehicles from the floodplain and ensure no additional vehicles are placed there.

- B. Within 15 calendar days of completing the Work, Respondent will provide a written report (Work Report) to EPA detailing and certifying the completion of the activities conducted, including confirmation through photographic evidence. The Work Report, with photographs, will demonstrate the adequate installation, coverage and integrity of the work implemented.
- C. EPA will notify Respondent as soon as possible after receipt of the Work Report whether it is accepted and all work, except ongoing operations and maintenance work, is completed under this AOC.

3. 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 this AOC to address the imminent and substantial endangerment to human health or the environment. EPA or Respondent will specify, in writing, the basis for its determination that any additional work is necessary.
- B. Within five days after the receipt of such a determination from EPA, Respondent will have the opportunity to meet and 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 Respondent must conduct additional work, Respondent will 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 will review the Additional Work Plan pursuant to Section IX below.
- D. 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.

4. Reporting

- A. Commencing the first full month after the effective date of this Order, Respondent will provide EPA and the Tribes with monthly progress reports which will 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) Projected work for the next reporting period.
 - 4) Records indicating the amounts generated or received of vehicles, removed tires, removed batteries, used oil, gasoline, mercury switches;
 - 5) Receipts, disposal records, bills of lading, documenting the sale or removal of

items addressed in Section VIII above, including vehicles, tires, batteries, used oil, gasoline, and mercury switches.

- B. These progress reports must be submitted by the tenth calendar day of the month.
- C. The reporting requirement in section VIII paragraph 4 becomes a quarterly calendar reporting requirement after EPA's acceptance of the Work Report.
- D. Respondent will 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. DOCUMENT CERTIFICATION AND CONFIDENTIALITY CLAIM

1. Any written submittal will be certified by the Respondent or his duly authorized representative. 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.

2. The certification shall be in the following form:

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

Signature :

Name :

Title :

Date:

3. 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 the Tribes any information for which a business confidentiality claim has been asserted.

4. Respondent may assert that certain documents, records and other information are

privileged under any privilege recognized by federal law.

5. 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.

6. No claim of privilege shall be made with respect to any data or any other documents or information evidencing conditions at or around the Facility that are the subject of this AOC.

X. ACCESS AND DATA AVAILABILITY

1. Respondent shall provide access to the Facility at reasonable times to EPA, EPA's contractors and oversight officials, and the Tribes' environmental representatives. Respondent also shall provide access at reasonable times to EPA, EPA's contractors and oversight officials, and the Tribes' environmental representatives, 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.

2. 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.

XI. RECORD RETENTION

1. 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.

2. 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 Branch Chief, RCRA/Oil Branch. 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.

XII. COMPLIANCE WITH OTHER LAWS

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

XIII. DISPUTE RESOLUTION

1. 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 shall expeditiously and informally attempt to resolve any disagreements.
2. The EPA and Respondent will first confer in an effort to resolve the dispute. If EPA's Project Coordinator and Respondent 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 will identify Respondent's objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondent.
3. 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, and in particular, any information that was considered during the prior dispute resolution steps, but not included in the submittal in section XIII paragraph 1 above.
4. If such request is timely submitted, EPA will issue a written determination. The decision of EPA will be incorporated into and become an enforceable part of this AOC and shall 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.
5. 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, 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.
6. 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.
7. 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.

XIV. FORCE MAJEURE

1. 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.

2. 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.

3. 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 XIII (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.

XV. RESERVATION OF RIGHTS

1. 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.

2. 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.

3. This AOC is not 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.

4. This AOC is not a permit. Compliance by Respondent with the terms of this AOC does not relieve Respondent of its obligations to comply with RCRA or any other applicable local, Tribal, state, or federal laws and regulations.

5. 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, will 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.

6. 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.

7. Respondent retains its right to assert claims against any third parties with respect to Work, or any other matter addressed by this AOC.

XVI. OTHER CLAIMS

1. 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.

2. 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.

3. 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.

4. Respondent will bear its own litigation costs and attorneys' fees.

5. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, Respondent will 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.

XVII. INDEMNIFICATION

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.

XVIII. MODIFICATION OF THIS AOC

1 Except for modification of Work, this AOC may only be modified by the mutual

agreement of EPA and Respondent. Any agreed modifications will 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.

2. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent will 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.

XIX. TERMINATION AND SATISFACTION

The provisions of this AOC will be deemed terminated and satisfied by Respondent upon written notice from EPA that Respondent has demonstrated all of the terms of this AOC, including any additional work as may be performed pursuant to Section VIII (Additional Work). Termination of this AOC shall not terminate Respondent's obligation to comply with: Section X (Access and Data Availability); Section XI (Record Retention); Section XV (Reservation of Rights); and Section XVII (Indemnification) of this AOC.

XX. SEVERABILITY

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 will 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.

XXI. EFFECTIVE DATE

This AOC is effective when the final order is filed by the hearing clerk.

XXII. 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 29 day of May, 2020


By: Thomas Green
Signature

Thomas Green
Print Name

Owner
Title

7716 BIARTEL, WOLF POINT, MT 59201
Company Address

It is so ORDERED and Agreed this ____ day of _____, 2020.

By: **SUZANNE BOHAN**
 Digitally signed by SUZANNE BOHAN
Date: 2020.06.25 08:15:26 -06'00'
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

EFFECTIVE DATE: _____

