

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

IN THE MATTER OF:)

Nebraska Railcar Cleaning Services, LLC)
115 Hickory Street)
Omaha, Nebraska 68108)

Docket No.: RCRA-07-2016-0030

RESPONDENT.)

Proceeding under Section 7003 of the)
Resource Conservation and Recovery Act,)
42 U.S.C. Section 6900, *et seq.*, as)
amended.)

ADMINISTRATIVE ORDER

I. INTRODUCTION

1. This Unilateral Administrative Order (“ORDER”) is issued by the United States Environmental Protection Agency, Region 7 (“EPA”) to Nebraska Railcar Cleaning Services, LLC (“NRCS” or “Respondent”). This ORDER provides for the performance of response actions to address on and offsite impacts, including any additional work that may be required by this ORDER, by Respondent in connection with the property located at 115 and 120 Hickory Street and at 280 Pierce Street Omaha, Nebraska 68108 (the “Facility”). In issuing this ORDER, the EPA intends for Respondent to remedy, and/or prevent the potential endangerment to human health or the environment from activities involving solid waste, and to insure that the work ordered by the EPA is designed and implemented to protect human health or the environment. Respondent shall perform the work in accordance with this ORDER, plans, standards, specifications and schedules set forth in this ORDER or developed by Respondent and approved by the EPA pursuant to this ORDER.

2. The EPA has determined that Respondent has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste and or hazardous waste that may present an imminent and substantial endangerment to health or the environment.

3. EPA has determined that issuing this ORDER, pursuant to Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, is necessary to protect human health and the environment.

4. The EPA has notified the State of Nebraska of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

II. JURISDICTION

5. This ORDER is issued under the authority vested in the Administrator of the EPA by Section 7003 of RCRA, 42 U.S.C. § 6973, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.*, which authority has been delegated to the Regional Administrators of the EPA by Delegations 8-22-A and 8-22-B, and redelegated to the Director of the Air and Waste Management Division of EPA Region 7 by Delegations R7-8-22-A-2 and R7-8-22-B-2.

III. PARTIES BOUND

6. This ORDER shall apply to and be binding upon on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Any change in the ownership or corporate status of including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this ORDER.

7. Respondent shall provide a copy of this ORDER to all current owners or subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Facility is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this ORDER, regardless of whether there has been a transfer of ownership or control of the Facility or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent. Respondent shall provide a copy of this ORDER within 7 days of the Effective Date of this ORDER, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the work performed pursuant to this ORDER. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this ORDER, on compliance with the terms of this ORDER. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this ORDER.

8. Not later than 60 days prior to any voluntary transfer by Respondent of any interest in the operation of the Facility, Respondent shall notify the EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondent shall notify the EPA within 24 hours of the decision to transfer its property interests. Respondent shall notify the EPA of any involuntary transfers immediately upon Respondent's initial receipt of notice of any involuntary transfer. Not later than 3 days after any transfer, Respondent shall submit copies of the transfer documents to the EPA.

IV. DEFINITIONS

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

“Day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the effective date of this ORDER as set forth in Section XXII of this ORDER.

“Facility” shall mean the location of Respondent’s operations located at 115 and 120 Hickory Street and at 280 Pierce Street Omaha, Nebraska 68108.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

“Work” shall mean all the activities and requirements specified in Section VIII WORK TO BE PERFORMED of this ORDER and the attached Work Plan, which is attached hereto and incorporated by reference.

V. FINDINGS OF FACT

10. Respondent Nebraska Railcar Cleaning Services, LLC (“Respondent” or “NRCS”) is a limited liability company in good standing under the laws of the state of Nebraska and is located at 115 and 120 Hickory Street, Omaha, Nebraska 68108, and which also performs work at 280 Pierce Street, Omaha, Nebraska 68108. These locations are hereinafter collectively referred to as the “Facility.”

11. Respondent is in the business of cleaning railcars and rail tank cars at all of these locations and disposing of the waste generated by cleaning those railcars and rail tank cars.

12. In the process of cleaning railcars and rail tank cars, Respondent generates waste material which includes, but is not limited to: crude oil, fertilizer, denatured alcohol, methanol, herbicides, vegetable oil, cement, sand and used personal protection equipment and rinsate from the cleaning process.

13. On July 9-10, 2014, the EPA conducted a RCRA compliance evaluation inspection of Respondent’s operations at the Facility. During the course of that inspection, the EPA inspector identified several waste streams for which Respondent had not performed hazardous waste determinations. At the time of the inspection, Respondent, through its representative Mr. Steven Braithwaite, told the EPA inspector that NRCS does not accept for cleaning railcars containing hazardous waste. He also stated that hazardous waste determinations were conducted with “process knowledge” of Respondent and that nothing Respondent generated in its railcar cleaning operation was hazardous waste.

14. At the time of the July 2014 inspection, the EPA also discovered that waste generated by Respondent during the course of its operations is dumped into an open unmarked roll off box, meeting none of the requirements of 40 C.F.R. § 262.34 for temporary storage of hazardous waste, and that the waste is later sent to a RCRA Subtitle D sanitary landfill with ordinary trash. Sawdust is routinely mixed with the waste in the roll off box as a means of absorbing the liquid waste that is generated by the Respondent's cleaning operations.

15. Subsequent to the July 2014 inspection, on October 29, 2014, the EPA issued a Section 3007 Request for Information ("3007 Request") to Respondent, seeking more information about the waste streams. Although the 3007 Request was required to be answered within 30 days, Respondent failed to respond.

16. On February 27, 2015, Respondent's representative contacted the EPA and asked for an extension for responding to the Section 3007 Request, which was granted. The reason for the requested extension was that Respondent was conducting sampling of its waste and needed to know what to analyze it for in order to appropriately respond to the Section 3007 Request.

17. On April 15, 2015, three employees of NRCS were cleaning a railroad tank car at the Facility when the vapor contents of the railcar exploded, killing two of the men. An investigation by the Omaha Fire Department determined that the explosion was caused by an unknown ignition source of the flammable material, but it was likely a spark from a metal tool or smoking by one of the victims.

18. On May 21, 2015, Respondent answered the 3007 Request, and later provided additional information for the 3007 Request on June 24, 2015. Its response stated that sampling indicated that two of the three types of crude oil Respondent cleaned from tank cars were hazardous, exhibiting the hazardous characteristic of "Ignitability" under 40 C.F.R. § 261.21, and that one of these materials exhibits the hazardous characteristic of "Toxicity" for benzene under 40 C.F.R. § 261.24. The identified hazardous materials were TransEnergy Services Crude Oil, which has an ignitability flashpoint of less than -23°F, and Bakken Blend Crude Oil, which has an ignitability flashpoint of less than -20°F. The latter is also hazardous as being "Toxic" for benzene.

19. Subsequent to the explosion, EPA discovered that Respondent also cleans out ethanol railcars. Ethanol is ignitable and when denatured, exhibits the hazardous characteristic of "Toxicity" for benzene under 40 C.F.R. § 261.24. Respondent did not inform the EPA of this waste stream during the 2014 inspection or in its responses to the 3007 Request.

20. On April 19, 2016, the EPA attempted a second RCRA compliance evaluation inspection of Respondent's operations. The inspector was denied access to the Facility but was able to interview Respondent's representative Mr. Adam Braithwaite. Mr. Braithwaite stated that

the wastes from Respondent's operations continue to be sent to the RCRA Subtitle D sanitary landfill with ordinary trash. He also stated that he did not know the toxicity levels of the wastes and whether or not the company had conducted hazardous waste determinations.

21. Based upon observations made by the EPA inspector in both inspections and Respondent's answer to the RCRA 3007 information request, EPA estimates that Respondent generates monthly approximately 2,600 kilograms of solid crude oil, 1,800 kilograms of liquid crude oil and an unknown quantity of ethanol and methanol waste. All of this waste is deposited into the on-site, unmarked roll off box which is then sent for disposal to the RCRA Subtitle D sanitary landfill with ordinary trash.

Threat to Human Health and the Environment

22. Some of the waste materials generated by Respondent which are handled as ordinary trash are highly volatile, as demonstrated by their low flash points and by the deadly explosion involving these materials at the Facility that occurred on April 15, 2015. Some of these waste materials have been described by Respondent's contractor as being "hazardous wastes", though Respondent has never identified them or treated them as such. The explosion which resulted in the deaths of two of Respondent's workers occurred during the handling of these wastes in the ordinary course of Respondent's business activities.

23. The United States Department of Health and Human Services has determined that benzene is a known carcinogen which can cause cancer. Both the International Agency for Cancer Research and the EPA have determined that benzene is carcinogenic to humans.

24. Respondent's ongoing failure to identify, handle and dispose of waste generated by Respondent in its railcar cleaning business in a manner prescribed by RCRA may present an imminent and substantial endangerment to human health and the environment. This is particularly true for the crude oil and the ethanol wastes, which are highly ignitable and contains high levels of benzene.

25. More particularly, Respondent's ongoing generation and storage of crude oil and ethanol wastes in open unmarked containers could lead to fires and explosions at the Facility which, in addition to their inherent hazards, would also allow benzene, a known human carcinogen, to be dispersed into the environment causing exposure to humans in the area.

26. Ongoing shipment of the crude oil and ethanol wastes to an ordinary RCRA Subtitle D sanitary landfill with ordinary trash by regular transport without safety precautions, could cause fires and explosions which could present a danger to human health and the environment.

27. Ongoing disposal of crude oil and the ethanol wastes from Respondent's railcar cleaning operation into an ordinary RCRA Subtitle D sanitary landfill could result in fires and

explosions in the landfill and leaching of benzene into the environment which, in addition to their inherent hazards, could present a danger to human health and the environment. This is especially true as the landfill operators may be unaware of the materials entering the landfill which are not labeled as hazardous waste or otherwise identified as anything other than ordinary trash.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the information in the Findings of Fact set forth above, the administrative record supporting this ORDER, and the belief that the Respondent continues to operate the Facility in the manner described in the Findings of Fact, the EPA has determined that:

28. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

29. Residue from crude oil, petroleum products, fertilizer, denatured alcohol, methanol, herbicides, and rinsate from the cleaning process, as well as used personal protection equipment which Respondent generates at the Facility from its railcar cleaning process, is discarded material and is a “solid waste” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

30. Respondent continuously fails to make hazardous waste determinations on the solid wastes it generates in its railcar cleaning process, as required by 40 C.F.R. § 262.11. As a result, all waste generated at the Facility are treated as ordinary solid wastes, without following requirements set forth in 40 C.F.R. § 262.34, and are ultimately sent for disposal to a RCRA Subtitle D sanitary landfill with ordinary trash.

31. Respondent’s sampling has demonstrated that a portion of the solid waste generated by the Respondent is “hazardous waste”, as defined by RCRA. Much of the solid waste generated by Respondent is toxic and volatile in nature. Respondent’s failure to make a proper hazardous waste determination and abide by regulations set forth in 40 C.F.R. § 262.34 for the waste it generates results in the on-going storage, treatment, handling, and/or disposal of solid waste from its railcar cleaning process at the Facility in a manner which may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

32. Respondent has caused or contributed to the endangerment, as it has at all times relevant to this action engaged in storage, handling, and disposal of the solid waste described herein in its capacity as the owner and operator of the Facility.

33. The actions required by this ORDER are necessary to protect human health and the environment because the solid waste generated by the Respondent’s railcar business is currently not being handled and disposed of in an appropriate manor.

34. Based upon the administrative record for the Facility and Findings of Fact and the Conclusion of Law and Determinations set forth above, and upon evidence and information that the past or present storage, handling and disposal practices of solid waste by Respondents at the Facility may present an imminent and substantial endangerment to health or the environment, the Director has determined that issuance of this ORDER is necessary to protect public health and the environment.

VII. ORDER

Based upon the administrative record for the Facility and the Findings of Fact and Conclusions of Law and Determinations set forth above, IT IS HEREBY ORDERED:

35. Respondent shall comply with all provisions of this ORDER, including, but not limited to the Work Plan which is attached to this ORDER, marked Attachment 1 and incorporated herein by reference. Respondents shall fully cooperate with the EPA and its authorized representatives in carrying out the provisions of this ORDER, including the taking of all actions set forth below within the time periods and in the manner prescribed, as required by this ORDER.

36. Respondent shall finance and perform the work in accordance with this ORDER, and plans, standards, specifications and schedules set forth in this ORDER or developed by Respondent and approved by the EPA pursuant to this ORDER. Respondent shall take no action in connection with solid waste it generates at the Facility other than those actions specified by the EPA in accordance with section VIII. WORK TO BE PERFORMED provisions of this ORDER.

VIII. WORK TO BE PERFORMED

37. Respondent shall perform all work set forth in this Order, including the work set for in the attached Work Plan, which is marked "Attachment 1" and incorporated herein by reference.

38. Respondent shall notify the EPA in writing within 7 days of receipt of this ORDER of its intent to comply with the ORDER and shall specify its respective proposed manners of compliance with the ORDER.

39. Within 7 days of receipt of this ORDER, Respondent shall notify the EPA in writing of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator.

40. The EPA Project Coordinator will be:

Edwin G. Buckner PE
Compliance Officer
EPA Region 7, AWMD/WEMM
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7621
Buckner.Edwin@epa.gov.

The EPA Project Coordinator shall be the EPA's designated representative for the Facility. Unless otherwise provided in this ORDER, all reports, correspondence, notices, or other submittals relating to or required under this ORDER shall be in writing and shall be sent to the EPA Project Coordinator at the address specified above, unless notice is given in writing to Respondent of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA-07-2016-0030. The EPA may also designate an Alternate Project Coordinator.

41. Respondent shall undertake and complete all of the work to the satisfaction of the EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. Within 21 days of the Effective Date of this ORDER, Respondent shall notify the EPA in writing of the names, titles and qualifications of the personnel, including agents, contractors, subcontractors, consultants and laboratories, to be used in carrying out the work.

42. Respondent's obligation to perform the work will begin on the Effective Date of this ORDER.

43. The work undertaken pursuant to this ORDER shall be conducted in compliance with all applicable EPA guidance, policies and procedures, and with this ORDER, and is subject to EPA approval.

IX. EPA APPROVAL OF DELIVERABLES

44. Deliverables required by this ORDER shall be submitted to the EPA for approval, disapproval or modification. All deliverables must be received at the EPA by the due date specified in this ORDER or by schedules developed pursuant to this ORDER. Deliverables shall be provided to the EPA Project Coordinator at the address in paragraph 40 above.

45. After review of any deliverable that is required pursuant to this ORDER, the EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission on specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above.

46. On receipt of a notice of disapproval, in whole or in part, pursuant to this Section, Respondent shall, within 5 days or such longer time as specified by the EPA in such notice, correct the deficiencies and resubmit the deliverable for approval.

47. Notwithstanding the receipt of a notice of disapproval pursuant to this Section, Respondent shall proceed, at the direction of the EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties for noncompliance regarding the deficient portion of the deliverable.

48. In the event that a resubmitted deliverable, or portion thereof, is disapproved by the EPA, the EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. The EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any action as required in a deliverable that has been modified or developed by the EPA.

49. If on resubmission, a deliverable is disapproved or modified by the EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately.

50. All deliverables required to be submitted to the EPA under this ORDER shall, on approval or modification by the EPA, be incorporated into and be enforceable under this ORDER. In the event that the EPA approves or modifies a portion of a deliverable required to be submitted to the EPA under this ORDER, the approved or modified portion shall be enforceable under this ORDER.

X. MODIFICATION OF THE WORK PLAN

51. If at any time during the implementation of the Work, Respondent identifies a need for a revision of the Work Plan, Respondent shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. The 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 ORDER.

52. In the event of any action or occurrence during the performance of the work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with the EPA's Project Coordinator. Respondent shall then submit to the EPA written notification of such emergency or threat at the Facility within 3 calendar days of such discovery. Respondent shall thereafter submit to the EPA for approval, within 4 days, a plan to mitigate this threat. The EPA will

approve or modify this plan, and Respondent shall implement this plan as approved or modified by the EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

XI. ADMINISTRATIVE DOCUMENTATION

53. The EPA retains the responsibility for the issuance of any decision documents related to the Facility.

54. The EPA will provide Respondent with copies of all decision documents for the Facility.

XII. DOCUMENT CERTIFICATION

55. Any report or other document submitted by Respondent pursuant to this ORDER which makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this ORDER shall be certified by a "responsible corporate officer" of Respondent. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions.

56. The certification required by the paragraph above, shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system 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, 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 fine and imprisonment for knowing violations.

Signature: _____

Name and Title: _____

Date: _____

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY

57. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this ORDER shall be validated by Respondent and submitted to the EPA within 21 days of Respondent's receipt of the data. Respondent shall tabulate data chronologically by media. The EPA will make available to Respondent data generated by the EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.

58. Respondent shall orally notify the EPA at least 21 days prior to conducting field sampling. At the EPA's request, Respondent shall allow split or duplicate samples to be taken by the EPA or the EPA's representative.

59. Facility Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondent shall provide access to the Facility at reasonable times to the EPA, the EPA's contractors and oversight officials. Respondent shall also provide access at reasonable times to the EPA, the EPA's contractors and oversight officials 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 ORDER. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this ORDER. Such access shall be provided to the EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Facility and appropriate off-site areas in ORDER to conduct actions that the EPA determines to be necessary. The EPA, its contractors and oversight officials shall notify Respondent of their presence on the Facility by presenting their credentials. All parties with access to the Facility under this paragraph shall comply with all approved health and safety plans and regulations.

60. Pursuant to this Section, any denial of access at reasonable times to any portion of the Facility property where a request for access was made for the purposes of enforcing the requirements of RCRA or this ORDER shall be construed as a violation of the terms of this ORDER subject to the penalty provisions outlined in section XVI. PENALTIES of this ORDER.

61. Access Agreements. Where action under this ORDER is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements. Any such access agreement shall provide for access by the EPA and its representatives to move freely in ORDER to conduct actions that the EPA determines to be necessary. The access agreement shall specify that Respondent is not the EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide the EPA's Project Coordinator with copies of any access agreements. Respondent shall immediately notify the EPA if after using Respondent's best efforts it is unable to obtain such 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, the EPA, and the EPA's authorized representatives 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. The EPA may, at its discretion, assist Respondent in obtaining access. In the event the EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse the EPA for all costs and attorney fees incurred by the United States in obtaining such access.

62. Confidential Business Information. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to the EPA pursuant to the terms of this ORDER under 40 C.F.R. § 2.203 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). Information the 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 the EPA, it may be made available to the public by the EPA or the state without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to conditions at the Facility, sampling, monitoring or the Work performed pursuant to this ORDER.

63. If Respondent asserts a legally recognized privilege in lieu of providing documents, Respondent shall provide the EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this ORDER shall be withheld on the grounds that they are privileged.

64. All data, information, and records created or maintained relating to any Solid Waste found at the Facility shall be made available to the EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to the EPA by clear and convincing evidence that such privilege exists.

65. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Facility.

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

XIV. COMPLIANCE WITH OTHER LAWS

67. Respondent shall perform all actions required pursuant to this ORDER in accordance with all applicable local, state, 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 ORDER.

XV. RECORD RETENTION

68. Respondent shall preserve all documents and information, including raw data, relating to the Work performed under this ORDER, or relating to any solid waste or hazardous waste found at the Facility, for 5 years following completion of the Work required by this ORDER.

69. Respondent shall make available to the EPA all employees and persons, including contractors, who engage in activities under this ORDER and ensure their cooperation with the EPA with respect to this ORDER.

70. After the 5 year retention period and 90 days before any document or information is destroyed, Respondent shall notify the EPA that such documents and information are available to the EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to the EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this ORDER and shall be addressed to the Regional Manager. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the 5 year retention period at the written request of the EPA.

71. All documents pertaining to this ORDER shall be stored by Respondent in a centralized location at the Facility, or an alternative location mutually approved by the EPA to promote easy access by the EPA or its representatives.

XVI. PENALTIES

72. Violation of this ORDER may subject Respondent to civil penalties of at least fourteen thousand twenty-three dollars (\$14,023.00) per violation per day. The assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. Should Respondent violate this ORDER or any portion hereof, the EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and may seek judicial enforcement of this ORDER.

XVII. RESERVATION OF RIGHTS

73. Notwithstanding any other provisions of this ORDER, 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 wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

74. The 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 ORDER, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.

75. This ORDER shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which the EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

76. This ORDER is not intended to be nor shall it be construed to be a permit. The EPA's approval of the Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required performance standards. Compliance by Respondent with the terms of this ORDER shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

77. Notwithstanding any other provision of this ORDER, no action or decision by the EPA pursuant to this ORDER, including without limitation, decisions by any authorized representative of the EPA, shall constitute final agency action giving rise to any right of judicial review prior to the EPA's initiation of a judicial action to enforce this ORDER, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this ORDER.

XVIII. OTHER CLAIMS

78. By issuance of this ORDER, the United States and the EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or the 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 ORDER.

XIX. ADDITIONAL WORK

79. The 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 this ORDER. The EPA may determine that Respondent shall perform any additional work and the EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within 5 days after

the receipt of such determination, Respondent shall have the opportunity to meet or confer with the EPA to discuss any additional work. Respondent shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within 10 days of Respondent's receipt of the EPA's determination that any additional work is necessary, or according to an alternative schedule established by the EPA. Upon approval of a Work Plan for any additional work, Respondent shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this ORDER.

XX. TERMINATION

80. Respondent may request EPA to terminate this ORDER 2 years after its Effective Date. Such a request must be in writing and addressed to the EPA Project Coordinator at the address set forth in Paragraph 40. The provisions of this ORDER shall be deemed terminated and upon written notice from the EPA that Respondent has demonstrated that all of the terms of this ORDER have been met and that the ORDER is no longer necessary to protect human health and the environment.

XXI. SEVERABILITY

81. If a court issues an ORDER that invalidates any provision of this ORDER or finds that Respondent has sufficient cause not to comply with one or more provisions of this ORDER, Respondent 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.

XXII. EFFECTIVE DATE

82. This ORDER is deemed effective, within 7 days of its receipt by Respondent (the "Effective Date"), unless a conference is requested as provided in section XXIII. OPPORTUNITY TO CONFER, and the EPA and Respondent mutually agree to modify the Effective Date.

XXIII. OPPORTUNITY TO CONFER

83. Respondent may, within 7 days of receipt of this ORDER, request a conference with the Director of the EPA Region 7 Waste Management Division, or whomever the Director may designate. If requested, the conference shall occur within 7 days of the request, unless extended by mutual agreement of the EPA and Respondent, at the office of EPA Region 7, located at 11201 Renner Boulevard, Lenexa, Kansas 66219.

84. At any conference held pursuant to Respondent's request, Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, Respondent shall contact:

Raymond C. Bosch
Attorney Advisor
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7501.

85. The purpose and scope of any such conference held pursuant to a request under this section shall be limited to issues involving the implementation of the Work required by this ORDER and the extent to which Respondent intends to comply with this ORDER. If such a conference is held, Respondent may present any evidence, arguments or comments regarding this ORDER, its applicability, any factual determinations on which the ORDER is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to the EPA within 3 days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this ORDER. It does not give Respondent a right to seek review of this ORDER, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within 3 days following the Effective Date of this ORDER. Any such writing should be directed to:

Raymond C. Bosch
Attorney Advisor
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7501.

86. Respondent is hereby placed on notice that the EPA will take any action that may be necessary in the opinion of the EPA for the protection of public health and welfare and the environment.

It is so ORDERED:

By: Becky Weber
Becky Weber, Director
Air and Waste Management Division
United States Environmental Protection Agency
Region 7

Date: 9/26/14

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day by United States Mail, Certified, Return Receipt Requested to the following party as this address:

Steven M. Braithwaite
Registered Agent
Nebraska Railcar Cleaning Services, LLC
115 Hickory Street
Omaha, NE 68108


Name


Date

ATTACHMENT 1

Section 7003 Work Plan Nebraska Railcar Cleaning Services

1. In compliance with Title 40 C.F.R. § 262.11, for each different material removed from rail tank cars, pits, tanks, or other locations (i.e., waste generated) by Nebraska Railcar Cleaning Services, complete a hazardous waste determination. These wastes include, but are not limited to, each type of crude oil, methanol, ethanol, fertilizer, herbicide, rinsates, personal protective equipment, and any other material removed from railcars. The hazardous waste determination must be made by conducting and documenting the following:
 - a. Determine whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4.
 - b. Determine whether or not the waste has been listed as a hazardous waste in Subpart D of 40 C.F.R. § 261. If the waste is a listed waste, provide the listed waste code in the documentation.
 - c. Determine whether or not the waste is identified as a characteristic hazardous waste in 40 C.F.R. § 261 Subpart C. To determine whether the waste meets any of the characteristics provided in Subpart C, the waste may need to be analyzed using one of the methods found in Subpart C of 40 C.F.R. 261, or by applying knowledge of the waste characteristics based upon the materials or processes used. Any laboratory analyses used to make this determination must be provided to the EPA as well as a detailed description as to how each sample was taken. The laboratory analyses required may include ignitability tests (40 C.F.R. § 261.21), corrosivity tests (40 C.F.R. § 261.22), reactivity tests (40 C.F.R. § 261.23), and/or toxicity characteristic leaching procedure (TCLP) testing. If the waste is a characteristic hazardous waste, provide the characteristic waste code in the documentation.
 - d. If Respondent elects to apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to make a hazardous waste determination on the identified waste streams, Respondent must provide a detailed explanation and its reasoning regarding the basis for this determination. Material Safety Data Sheets may provide information to supplement Respondent's determination. Also, if Respondent applies knowledge to make the determination, include all hazardous waste codes for the wastes in the documentation.
 - e. If Respondent determines a waste is not hazardous, Respondent must document that negative determination sufficiently to demonstrate that the waste is not hazardous.

2. Based upon the results of the hazardous waste determinations, Respondent must obtain a permit to manage the hazardous wastes or comply with the criteria of 40 C.F.R. § 262.34 which provides exemption from the permitting requirements when such hazardous waste management criteria are followed. There are also other independent requirements for a facility managing hazardous waste with which Respondent must comply. The following is typical of those criteria and requirements, but does not include all such criteria of 40 C.F.R. § 262.34 or requirements found in the hazardous waste regulations. Conduct and document the following for hazardous waste identified in 1 above:
 - a. Accumulate hazardous waste in containers in good condition. These containers must remain closed, be labeled with the words “hazardous waste,” and be marked with the date accumulation began (the date the waste was removed from the railcar.)
 - b. Accumulate the hazardous waste on site no more than 90 days after the date accumulation began before shipping it off site for disposal.
 - c. Inspect hazardous waste container accumulation areas on a weekly basis for leaking containers and deterioration of containers.
 - d. Ship the hazardous waste to a hazardous waste treatment, storage, or disposal facility permitted under Subtitle C of RCRA; not a sanitary municipal landfill permitted under Subtitle D of RCRA.
 - e. Complete a hazardous waste manifest and land disposal records for each shipment of hazardous waste. The manifests and records must accompany the shipment and identify the hazardous waste transporter with its unique EPA identification number.
 - f. Develop and maintain a contingency plan in accordance with 40 C.F.R. § 265 Subpart D.
 - g. Conduct and maintain all preparedness and prevention activities, including arrangements with local authorities, in accordance with 40 C.F.R. § 265.37.
 - h. Train all employees managing hazardous waste in accordance with 40 C.F.R. § 265.16.

3. On a monthly basis, provide to the EPA a report demonstrating that Respondent has implemented and is maintaining the requirements in 1 and 2 above. Such report shall include, but not be limited to:
 - a. Copies of all documentation for hazardous waste determinations made during the month,

- b. Photographs of every individual hazardous waste container on site demonstrating proper management of said container(s). Photographs shall also include a picture of each container label showing the date accumulation began,
- c. Copies of all inspection documentation demonstrating proper management of hazardous waste containers,
- d. Copies of all hazardous waste generator manifests and records sent or received during the month, demonstrating the proper off-site disposition of the hazardous wastes,
- e. A copy of the initial contingency plan and copies of all subsequent revisions to that plan,
- f. A copy of Respondent's attempt at making arrangements with local authorities and documentation showing all preparedness and prevention requirements have been met,
- g. A copy of documentation showing all employees handling hazardous waste have received initial RCRA training and all subsequent annual refresher training.