

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Docket No. RCRA-8-2014- 0001

2014 FEB 21 AM 11:14
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

U.S Magnesium LLC,

Respondent.

**ADMINISTRATIVE ORDER ON
CONSENT**

PROCEEDING UNDER SECTION 7003
OF THE SOLID WASTE DISPOSAL ACT,
AS AMENDED, 42 U.S.C. § 6973

I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent U.S. Magnesium LLC (Respondent). This AOC provides for Respondent to address the spill of acidic liquid waste from the pond adjacent to the gypsum pile at the magnesium production facility (facility) at Rowley, Utah as set forth in Section VIII (Work to be Performed), including any Additional Work that may be required by Section XXIV (Additional Work) of this AOC. In entering into this AOC, the mutual objectives of the EPA and Respondent are to identify, investigate, remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving "solid waste," and to insure that the Work ordered by EPA be designed and implemented to protect human health and/or the environment. These mutual objectives are described in Section VIII (Work to be Performed).

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

3. The EPA notified the State of Utah of this action pursuant to section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

4. The 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

5. This AOC is issued under the authority vested in the Administrator of the EPA by section 7003 of RCRA, 42 U.S.C. § 6973, which authority has been delegated to the Regional Administrators of the EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to supervisors in the Legal Enforcement Program and the Technical Enforcement Program of EPA Region 8, acting jointly, by Regional Delegation 8-22-C (October 17, 1997).

6. Respondent agrees to undertake and complete all actions required by the terms and conditions of this AOC. In any action by the EPA or the United States to enforce the terms of this AOC, Respondent consents to and agrees not to contest the authority or jurisdiction of the supervisors of the Legal and Technical Enforcement Programs to issue or enforce this AOC, and agrees not to contest the validity of this AOC or its terms or conditions.

III. PARTIES BOUND

6. This AOC shall apply to and be binding upon the EPA, and 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, as well as upon subsequent purchasers of the Site. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this AOC.

7. Respondent shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been a transfer of ownership or control of the Site 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 AOC within seven (7) days of the Effective Date of this AOC, 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 AOC. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this AOC.

8. Not later than 60 days prior to any voluntary transfer by Respondent of any interest in the Site or 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 property. 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 AOC 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 AOC the following definitions apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Data Quality Objectives” shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.

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

“Effective Date” shall be the date on which EPA signs this AOC.

“AOC” shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

“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.

“Site” shall mean the area depicted in the photo attached as Attachment A, located just north of the magnesium production facility that is approximately fifteen miles north of Exit 77 from Interstate 80 at Rowley, Utah.

V. FINDINGS OF FACT

10. Respondent is a corporation incorporated in the State of Utah, with its principal place of business in the State of Utah.

11. Respondent is a person as provided for at RCRA section § 1004(15), 42 U.S.C. § 6903(15).

12. Respondent has owned and operated the facility since 2001.

13. The facility is located at Rowley, Tooele County, Utah, in Township 2N, Range 8W, Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, and 16, at longitude 112 degrees 44 minutes west, latitude 40 degrees 55 minutes north.

14. The mailing address of the facility is 238 North 2200 West, Salt Lake City, Utah 84116.

15. The facility produces magnesium using an anhydrous electrolytic production process. In addition to magnesium metal and alloys, the facility produces chlorine, ferric and ferrous chloride, and calcium chloride, and is producing or has produced other materials as well. The main raw material is concentrated brine from the Great Salt Lake.

16. The facility has at all times pertinent to this Order discharged waste streams from production processes into several ditches, all of which aggregate into a ditch that flows into a 400-acre pond. The waste streams and the pond each have a pH of approximately 1.

17. Some of the liquid waste from the 400 acre pond has entered and continues to enter the pond near the facility's gypsum pile, as depicted in Attachment A. The north berm of this pond has been breached, allowing very low pH liquid waste to spill out north of the north berm onto the area depicted in Attachment A. The liquid has pooled on federal public land managed by the Bureau of Land Management (BLM) and also on land owned by Respondent up to a depth of one foot.

18. Respondent reported the spill to the EPA's National Response Center and the Utah Department of Environmental Quality on January 23, 2014. Attachment B.

19. The spill is located at T2NRWS04 and T2NR8WS03.

20. On February 5, 2014, the EPA removal program obtained pH measurements of the spilled liquid at thirteen different locations on BLM land. Liquid analyzed at ten of these locations had pH levels of one, liquid analyzed at one location had a pH level of two, and liquid analyzed at two locations had approximately neutral pH.

21. Humans, wildlife and livestock present in the area are at risk because there is no control of access to the area where acidic liquid waste is pooled on the ground.

22. There is no fencing or signage between BLM land and land owned by Respondent in the area of the spill. Low pH liquid on Respondent's land therefore presents the same risk to humans, wildlife and livestock as does the low pH liquid on BLM land.

23. Acidic liquid with a pH of 1 can harm humans. It is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause coughing, hoarseness, inflammation and ulceration of the respiratory tract, chest pain, and pulmonary edema in humans. Acute oral exposure may cause corrosion of the mucous membranes, esophagus, and stomach, with nausea, vomiting, and diarrhea reported in humans. Dermal contact may produce severe burns, ulceration, and scarring, pulmonary irritation, lesions of the upper respiratory tract, and laryngeal and pulmonary edema have been reported in rodents acutely exposed by inhalation.

24. This acidic liquid also poses a significant hazard to wildlife and livestock that come into contact with it. Ingestion of strong hydrochloric acid can cause corrosion of the mucous membranes, esophagus, and stomach tissue, leading to perforation or hemorrhaging of the gastric

lining of the stomach. Over a longer timeframe, ingestion can also cause circulatory collapse, which is often the ultimate cause of death from ingestion. Contact with skin or eyes can cause severe acid burns.

25. Conditions at the location of the spill may present an imminent and substantial endangerment to health or the environment.

26. This potential endangerment stems from the past or present handling, storage, treatment, transportation, or disposal of solid waste at the facility.

27. This AOC may be necessary to protect public health and the environment.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

29. Wastes generated at the facility, managed in the ditch and pond system at the facility, and which spilled to Respondent's land and BLM land north of the facility, are solid wastes as defined in section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

30. Respondent has contributed and/or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste at the facility within the meaning of section 7003 of RCRA, 42 U.S.C. § 6973.

31. The past or present handling of solid waste at the facility may present an imminent and substantial endangerment to public health or the environment within the meaning of section 7003 of RCRA, 42 U.S.C. § 6973.

32. The EPA has determined that the past or present handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment.

33. The EPA has determined that entering into this Consent Order pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, is necessary to protect public health or the environment.

VII. ORDER ON CONSENT

34. Based upon the administrative record for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered. Respondent shall comply with all provisions of this AOC, including, but not limited to, all appendices to this AOC and all documents incorporated by reference into this AOC.

35. Respondent shall finance and perform the Work in accordance with this AOC, and plans, standards, specifications and schedules set forth in this AOC or developed by Respondent and approved by the EPA, in consultation with BLM, pursuant to this AOC.

VIII. WORK TO BE PERFORMED

36. Project Coordinator. On or before the Effective Date of this AOC, Respondent shall designate its Project Coordinator. Respondent shall notify the EPA in writing within five (5) days of the Effective Date of this AOC of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator will be David Duster, 1595 Wynkoop Street, Denver, CO, 80202, 303-312-6665, duster.david@epa.gov. EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. The EPA and Respondent have the right to change their respective Project Coordinators. The other party must be notified in writing at least 10 days prior to the change.

37. The EPA will approve/disapprove of Respondent's Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondent shall be subject to the EPA's review, for verification that such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.

38. The EPA Project Coordinator shall be the EPA's designated representative for the Site. Unless otherwise provided in this AOC, all reports, correspondence, notices, or other submittals relating to or required under this AOC shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 36, 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 8-2014 - 0001.

39. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, in consultation with BLM, pursuant to section 7003 of RCRA, 42 U.S.C. § 6973. All of the Work performed under this AOC shall be under the direction and supervision of Respondent's Project Coordinator and shall be in accordance with the terms of this AOC. Within 5 days of the Effective Date of this AOC, Respondent shall notify 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.

40. Respondent's obligation to perform the Work will begin on the Effective Date of this AOC.

41. The Work shall consist of three phases:

Phase 1. The portion of the spill on BLM land shall be fenced immediately. Fencing shall consist of five strand barbed wire sufficient to keep cattle out. The fencing shall be posted with signs 150 feet apart providing "Warning - Stay Out - Hazardous Material Area behind this sign. For additional information call the U.S. Environmental Protection Agency at 303-312-6665." Respondent will remove the fencing upon notice from the EPA. The EPA will consult with BLM in determining when the fencing shall be removed.

Phase 2. Respondent shall prepare a Report or Work Plan to be approved by the EPA, in consultation with the BLM, detailing the following:

- location of the spill on land owned by Respondent;
- the manner in which access to the area of the spill on Respondent's land will be controlled at all times including access to property owned and operated by Respondent;
- measures to prevent imminent and substantial endangerment to health, wildlife and livestock from the low pH liquid on that land;
- measures necessary to address the cause of the release from the pond; and
- a schedule of the Work to be completed in Phase 2.

Upon approval by the EPA, in consultation with BLM, Respondent will implement the measures described in the Report or Work Plan according to the schedule approved by the EPA, in consultation with the BLM.

Phase 3. Respondent shall prepare a Report or Work Plan to be approved by the EPA, in consultation with the BLM, describing the following:

- how Respondent will address low pH liquid on BLM and Respondent's lands;
- how Respondent will assess the need for remediation of soils affected by the spill to ensure protection of health and the environment;
- if necessary, measures required to remediate soils, such as excavation of or amendments to soils;
- how Respondent will legally survey, mark and post the property boundary between BLM and Respondent's lands;
- contingency planning for addressing future releases of low pH liquid from the retention pond; and
- a schedule of the Work to be completed in Phase 3.

Upon EPA approval, Respondent shall implement the measures described in the Work Plan according to the schedule approved by the EPA, in consultation with the BLM.

42. The Work undertaken pursuant to this AOC shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this AOC, and is subject to EPA approval. The EPA intends to consult with BLM when considering whether to grant such approval.

43. The Work shall be performed according to the following schedule unless the EPA, after consulting with BLM, agrees to a modification of this schedule:

- Phase 1: commenced within 1 week of the effective date of this AOC and, subject to obtaining an access agreement from the BLM, completed within 2 weeks of the effective date of this AOC.
- Phase 2: The Report or Work Plan shall be submitted to EPA within 3 weeks of the effective date of this AOC and Work completed as required in the schedule.
- Phase 3: The Work Plan shall be submitted to EPA within 6 weeks of the effective date of this AOC and Work completed as required in the schedule.

44. Health and Safety Plan. Respondent shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this AOC. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations.

IX. EPA APPROVAL OF DELIVERABLES

45. Deliverables required by this AOC shall be submitted to the EPA for approval or modification pursuant to the following paragraph. All deliverables must be received at the EPA by the due date specified in this AOC or by schedules developed pursuant to this AOC. The EPA intends to consult with BLM when considering whether to approve deliverables.

46. After review of any deliverable that is required pursuant to this AOC, and after consulting with BLM, the EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon 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. However, the EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 days, except where the EPA determines that to do so would cause serious disruption to the Work or where the EPA has disapproved previous submission(s) due to material defects and the EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

47. In the event of approval, approval upon conditions, or modification by the EPA, pursuant to Paragraph 46a), (b), or (c), Respondent shall proceed to take any action required by the deliverable, as approved or modified by the EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by the EPA. In the event that the EPA modifies the submission to cure the deficiencies pursuant to Paragraph 46(c) and the EPA determines the submission has a material defect, the EPA retains its right to seek stipulated penalties, as provided in Section XVII (Penalties).

48. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 46(d), Respondent shall, within 10 days or such longer time as specified by the EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVII (Penalties), shall accrue during the 10-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 46 and 47.

49. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 46(d), 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 stipulated penalties for the deficient portion of the deliverable under Section XVII (Penalties).

50. 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 which has been modified or developed by the EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

51. If upon 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 unless Respondent invokes the dispute resolution procedures set forth in Section XVI (Dispute Resolution) and the EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If the EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVII (Penalties).

52. All deliverables required to be submitted to the EPA under this AOC, shall, upon approval or modification by the EPA, be incorporated into and be enforceable under this AOC. In

the event the EPA approves or modifies a portion of a deliverable required to be submitted to the EPA under this AOC, the approved or modified portion shall be enforceable under this AOC.

X. QUALITY ASSURANCE

53. As part of the Work, Respondent shall include a Quality Assurance Project Plan (QAPP), for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this AOC by reference.

54. As part of the Work, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this AOC.

55. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by the EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable report. The EPA may reject any data that does not meet the requirements of the approved report and the EPA analytical methods and may require resampling and additional analysis.

56. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that the EPA follows. Respondent shall, upon the EPA's request, make arrangements for the EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon the EPA's request, Respondent shall have its laboratories perform analyses of samples provided by the EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondent shall submit a plan to address the deficiencies and the EPA may require resampling and additional analysis.

57. The EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event the EPA requires a laboratory change, Respondent shall propose two alternative laboratories within 30 calendar days. Once the EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within 15 calendar days.

XI. ADMINISTRATIVE DOCUMENTATION

58. The EPA retains the responsibility for the issuance of any decision documents related to the Site.

59. The EPA will provide Respondent with copies of all decision documents for the Site.

60. Submission of Documentation. The EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to the EPA documents developed during the course of performing the Work upon which selection of the response action may be based. The EPA will maintain an administrative record file. The administrative record supporting this AOC and the Work to be performed shall be available for public review at the RCRA File Room, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado from 8 a.m. to 5 p.m., every Federal business day.

XII. DOCUMENT CERTIFICATION

61. Any report or other document submitted by Respondent pursuant to this AOC 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 AOC 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.

62. The certification required by the previous paragraph 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: _____

Title: _____

Date: _____

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY

63. 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 AOC shall be validated by Respondent and submitted to the EPA within 30 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.

64. Respondent shall orally notify the EPA at least 10 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.

65. Site Access. Pursuant to section 3007(a) of RCRA, 42 U.S.C. § 6927(a), Respondent shall provide access to the Site 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 Site and the actions conducted pursuant to this AOC. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this AOC, as described in Paragraph 67. Such access shall be provided to the EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site 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 Site by presenting their credentials. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans and regulations.

66. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made for the purposes of enforcing the requirements of RCRA or this AOC shall be construed as a violation of the terms of this AOC subject to the penalty provisions outlined in Section XVII (Penalties) of this AOC.

67. Access Agreements. Where action under this AOC 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 within 10 days of approval of any Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. 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.

68. 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 AOC under 40 CFR § 2.203 in the manner described at 40 CFR § 2.203(b) and substantiated with the information described at 40 CFR 2.204(e)(4). Information the EPA determines is confidential will be given the protection specified in 40 CFR 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 Site conditions, sampling, monitoring or the Work performed pursuant to this AOC.

69. Privileged Documents. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a 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 AOC shall be withheld on the grounds that they are privileged.

70. All data, information, and records created or maintained relating to any solid or hazardous waste found at the Site 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.

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

72. Nothing in this AOC 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

73. Respondent shall perform all actions required pursuant to this AOC 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 AOC.

XV. RECORD RETENTION

74. 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 Site, for 10 years following completion of the Work required by this AOC.

75. Respondent shall acquire and retain copies of all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors or attorneys.

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

77. After the 10 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 AOC and shall be addressed to the Director, Technical Enforcement Program, EPA Region 8. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the 10 year retention period at the written request of the EPA.

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

XVI. DISPUTE RESOLUTION

79. Respondent shall raise any disputes concerning the Work required under this AOC to the EPA (excluding any decision document(s) issued by the EPA), in writing, within 15 days after receiving written notice from the EPA regarding any aspect of the Work required under this AOC that Respondent disputes. The EPA and Respondent shall expeditiously and informally attempt to resolve any disagreements. The EPA and Respondent Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within 3 days of the first conference, Respondent shall notify the EPA, within 5 days, in writing of its objections. Written objections shall identify Respondent's objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondent. The EPA and Respondent then have an additional 14 days from the EPA's receipt of the objections to reach agreement. If an agreement is not reached within the 14 days, Respondent may request in writing, within 5 days, a determination resolving the dispute by the EPA Region 8 Director, Office of Enforcement, Compliance and Environmental Justice. The request should provide all information that Respondent believes is relevant to the dispute. If such request is submitted within 5 days, the Division Director shall issue a determination in writing. The EPA's

final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondent shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to perform or does not actually perform the Work in accordance with the EPA's decision, the EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondent, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as the EPA seeks to enforce this AOC.

80. If the EPA and Respondent reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.

81. The existence of a dispute and the 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 the EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

XVII. PENALTIES

82. Stipulated Penalties. Any time Respondent fails to comply with any requirement of this AOC, Respondent shall be liable for stipulated penalties in the amounts set forth in this Section unless a Force Majeure event has occurred as defined in Section XVII (Force Majeure) and the EPA has approved the extension of a deadline as required by Section XVII (Force Majeure). Compliance with this AOC by Respondent shall include completion of an activity or any matter under this AOC in accordance with this AOC, and within the specified time schedules approved under this AOC.

Period of failure to comply	Penalty per violation day
Days 1-15	\$1,000
Days 16-30	\$5,000
Over 30 days	\$10,000

83. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation or completion of the activity. Payment shall be due within 30 days of receipt of a demand letter from the EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC, even where those violations concern the same event (e.g., submission of a work plan or report that is late and is of unacceptable quality).

84. If payment is not made within 30 days of the date of Respondent's receipt from the EPA of a written demand for payment of the penalties or of the date of agreement or decision

resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after Respondent's receipt of the EPA's demand letter, or the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues pursuant to 31 U.S.C. § 3717.

85. Respondent shall make payments by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of Respondent's receipt of the EPA's request, and shall be submitted to the following address:

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

86. Docket No. RCRA-08-2014-0001 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Director, Technical Enforcement Program
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

Respondent may dispute an EPA determination that it failed to comply with this AOC by invoking the dispute resolution procedures under Section XVII (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to the EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.

87. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this AOC. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this AOC.

88. No payments under this Section shall be deducted for federal tax purposes.

89. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

90. Civil Penalties. Violation of this AOC may subject Respondent to civil penalties of at least seven thousand five hundred dollars (\$ 7,500.00) per violation per day. The assessment of penalties is 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, and 40 CFR Part 19, as amended, 78 Fed. Reg. 66643 (Wednesday, November 6, 2013). Should Respondent violate this AOC or any portion hereof, the EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this AOC.

XVIII. FORCE MAJEURE

91. 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 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. 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: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. 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.

92. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondent shall orally notify the EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondent's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

93. If the EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by the EPA. If the EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then the EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.

94. If the EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVI (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 the EPA will extend the time for performance as the EPA determines is necessary.

XIX. RESERVATION OF RIGHTS

95. 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 wastes, on, at, or from the Site, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

96. 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 AOC, including without limitation the assessment of penalties under section 7003 of RCRA, 42 U.S.C. § 6973.

97. This AOC 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.

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

99. Notwithstanding any other provision of this AOC, no action or decision by the EPA pursuant to this AOC, including without limitation, decisions of the Regional Administrator, the Director, Office of Enforcement, Compliance and Environmental Justice, or 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 AOC, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this AOC.

XX. OTHER CLAIMS

100. By issuance of this AOC, 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 AOC.

101. Respondent waives all claims against the United States relating to or arising out of the conduct of this AOC, including, but not limited to, contribution and counterclaims.

102. Respondent shall bear its own litigation costs and attorney fees.

103. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XXI. INSURANCE

104. Prior to commencing the on-site Work under this AOC, Respondent shall secure, and shall maintain in force for the duration of this AOC and for 2 years after the completion of all activities required by this AOC, comprehensive general liability insurance and automobile insurance with limits of \$1 million dollars, combined single limit, naming the EPA as an additional insured. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, Respondent shall provide the EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to the EPA that its contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

105. For the duration of this AOC, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondent, in furtherance of this AOC.

106. At least 1 day prior to commencing the Work under this AOC, Respondent shall certify to the EPA that their contractors and subcontractors have obtained the required insurance.

XXII. INDEMNIFICATION

107. 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: (a) arising from, or on account of, 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 (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence.

XXIII. MODIFICATION OF THIS AOC

108. This AOC may only be modified by the mutual agreement of the EPA, in consultation with BLM, and Respondent. Any agreed modifications shall be in writing, shall be signed by both parties, and shall have as their effective date the date on which they are signed by the EPA, and be incorporated into this AOC.

109. No informal advice, guidance, suggestion, or comment by the EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by the EPA, incorporated into and enforceable under this AOC.

XXIV. ADDITIONAL WORK

110. 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 Section I (Introduction). 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 AOC.

XXV. TERMINATION AND SATISFACTION

111. The provisions of this AOC shall be deemed terminated and satisfied by Respondent upon written notice from the EPA that Respondent has demonstrated that all of the terms of this AOC, including any additional work as may be performed pursuant to Section XXVII (Additional Work) and any stipulated penalties demanded by the EPA under Section XIX (Penalties), have been addressed to the satisfaction of the EPA. Termination of this AOC shall not terminate Respondent's obligation to comply with: Sections XIII (Sampling, Access and Data Availability); XV (Record Retention); XIX (Reservation of Rights); and XXII (Indemnification) of this AOC,

XXVI. SEVERABILITY

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

XXVII. EFFECTIVE DATE

113. This AOC shall be effective when the EPA signs it. Within 2 business days of signing this AOC, the EPA will provide Respondent with a copy of the signature page of this AOC signed by supervisors of the Legal and Technical Enforcement Programs. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this AOC and to bind the party he represents to this document. 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 the EPA, to enforce its terms or seek penalties for its violation. Respondent retains its right to assert claims against any third parties with respect to this Site.

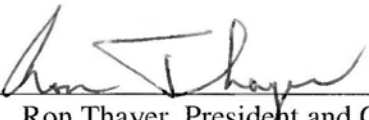
XXVIII. ATTACHMENTS

114. All attachments to the Consent Order listed below are incorporated by reference. Attachments to this Consent Order are:

Attachment A – Aerial photograph and delineation of spill
Attachment B – Spill report

RESPONDENT, U.S. Magnesium, LLC

Date: 2/20/14

By: 
Ron Thayer, President and Chief Executive Officer

In the Matter of: U. S. Magnesium, LLC
Proceeding Under Section 7003 of the Solid Waste Disposal Act, as
Amended, 42 U.S.C. § 6901 et seq., 42 U.S.C. § 6973

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION VIII
Complainant**

Date: _____

By: _____
Kelcey Land, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: _____

By: _____
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

EFFECTIVE DATE: _____

Attachment A – Aerial photograph and delineation of spill
Attachment B – Spill report

RESPONDENT, U.S. Magnesium, LLC

Date: _____

By: _____

Ron Thayer, President and Chief Executive Officer

In the Matter of:

U. S. Magnesium, LLC

Proceeding Under Section 7003 of the Solid Waste Disposal Act, as Amended, 42 U.S.C. § 6901 et seq., 42 U.S.C. § 6973

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION VIII
Complainant**

Date: 2/21/14

By: Kelcey Land

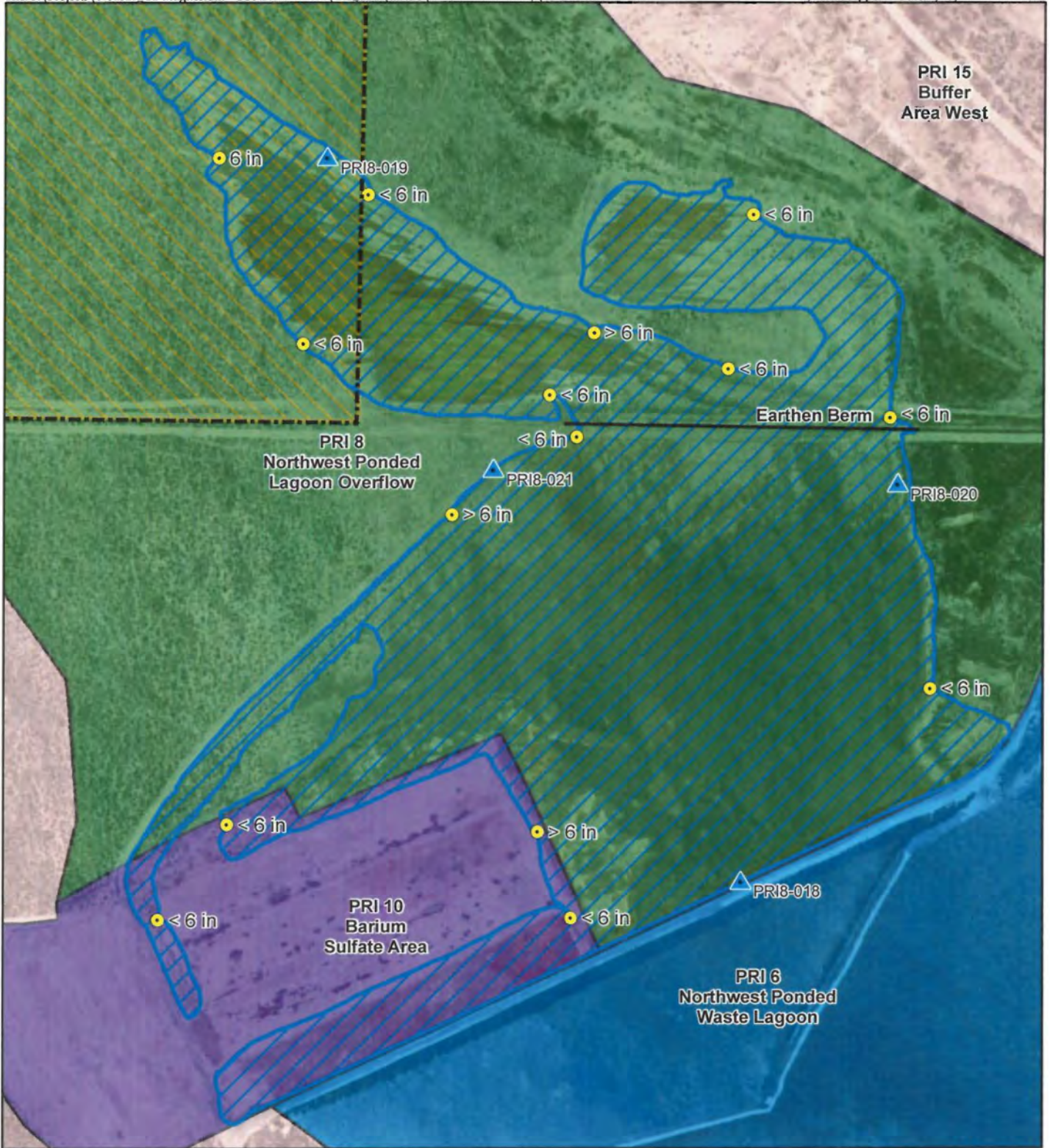
Kelcey Land, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 2.21.2014

By: James H. Eppers

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

EFFECTIVE DATE: 2/21/14



- Surface Water Sample Locations
- Estimated Water Depth (2/6/2014)
- Extent Waters in PRI-8 (2/6/2014)
- US Magnesium Property
- Federal Land (BLM)
- Preliminary Remedial Investigation Areas**
- PRI-6: Northwest Ponged Waste Lagoon
- PRI-8: Northwest Lagoon Overflow
- PRI-10: Barium Sulfate Area
- PRI-15: Buffer Area West

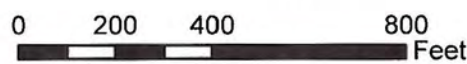


Figure 1
Water Areas
 PRI-8
 U.S. Magnesium, LLC
 Tooele County, Utah

USmag
 Environmental Resources Management
 102 West 500 South, Suite 650
 Salt Lake City, Utah 84101-2334



Utah Department of Environmental Quality
 Division of Environmental Response and Remediation
 195 North 1950 West Salt Lake City, Utah 84116
 Bus. Hours: 801-536-4100
 Report Spills 24/7/365: 801-536-4123

Report Number 11690

ENVIRONMENTAL INCIDENT REPORT - TOOELE CO - SUSPECTED RELEASE OF HCL

Report Taken By: M Zucker

Date / Time Reported: 1/23/2014 15:45

REPORTING PARTY DATES AND TIMES

Reporting Party: Dave Gibby

Title: Env

Company: US Magnesium

Phone: (801) 532-1522

Date & Time Discovered: 1/23/2014 15:30

RESPONSIBLE PARTY

Name: US Magnesium

Phone: (801) 532-1522

Address: 238 North 2200 West Salt Lake City

INCIDENT LOCATION

Incident Address: 15 miles north of exit 77 I-80

Nearest Town: ROWLEY

County: TOOELE

Highway:

Mile Marker:

UTM: (E) 353983 (N) 4530771

INCIDENT SUMMARY

Party is reporting a release of 8,827 lbs of hydrogen chloride contained in waste water effluent to a facility unlined natural depression retention pond on the facility property. This quantity is a calculated average amount discharged on daily operational basis. Volume of pond may vary based on actual rates of process flow, and impact of precipitation and evapotranspiration. Property boundary between the facility and adjacent BLM land exists beyond the dike. The boundary is not marked. Facility is making conservative estimate that 10% of reported amount (900 lbs) infiltrates as overflow through a dike that separates retention pond from property boundary. Notification is being made based on flow-study information developed during an RI/FS performed under CERCLA authority.

**CHEMICAL(S)
REPORTED**

Hydrochloric Acid 882 Pounds

IMPACTED MEDIA	Media	Media Other	Land Use	Waterway Name	Near Water	Distance	NRC Rpt. #
	Groundwater	N/A	Industrial	N/A		N/A	1071949
	Groundwater	N/A	Commercial	N/A		N/A	1071953

NOTIFICATIONS MADE	Agency	Contact	Phone	Date	Time	By	Active?
	DWQ	Dan Griffin	(801) 536-4387	1/23/2014	16:50	M Zucker	
	Tooele County HD	Group	(435) 277-2440	1/23/2014	17:30	M Zucker	

ACTIONS TAKEN	Date	Agency	Action	Action Details
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Incident notification reports are prepared by the DERR using information provided by the reporting party. The information is considered preliminary and is subject to revision. The reported incident and associated details may or may not be valid