



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Phone 800-227-8917
<http://www.epa.gov/region08>

JUN 23 2011

Ref: 8ENF-RC

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. Sherri Blanchard, County Health Officer
Converse County Department of Health
111 South 5th Street
Douglas, WY 82633

Re: Jim's Water Service-Cannon Land & Livestock
Commercial Oilfield Waste Disposal Facility
near Bill, Wyoming, Administrative Order
Pursuant to Section 7003 of RCRA

Dear Dr. Blanchard:

This letter is to notify you that the U.S. Environmental Protection Agency Region 8 (EPA) is issuing an administrative order to Jim's Water Service, Incorporated (JWS) as owner and/or operator of the JWS-Cannon Land & Livestock commercial oilfield waste disposal facility near Bill, in Converse County, Wyoming. The order, issued under the authority of Section 7003 of the Solid Waste Disposal Act, as amended (RCRA), 42 U.S.C. § 7003, requires that JWS promptly develop a work plan and conduct activities to ensure that the facility is operated in a manner that is protective of human health and the environment. The order is being issued in response to recent and historical migratory bird and wildlife mortalities found at the facility.

As detailed in the order, we have determined that conditions at the facility continue to pose an imminent and substantial endangerment. The order is intended to ensure that the conditions leading to the bird mortalities do not exist for another migratory bird season. Sections VII (Work to be Performed), XVI (Opportunity to Confer, and Modification), XVII (Notice of Intent to Comply) and XX (Effective Dates) provide for deadlines on certain time-critical elements of the order. Section VIII (Access) of the order provides that JWS shall permit full access to the EPA, USFWS, WDEQ and the County for implementation and oversight of the order.

If you have any questions regarding this matter, please call Randy Lamdin at (303) 312-6350, or for questions regarding legal issues, please contact Linda Kato, of EPA's Legal Enforcement Program, at (303) 312-6852.

Sincerely,

Kelcey Land

Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program

Enclosure (order)

cc: Linda Kato, 8LEP
Randy Lamdin, 8ENF-RC



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 JUN 23 PM 2:44

Docket No. RCRA-08-2011-0002

FILED
EPA REGION VIII
REGISTRATION CLERK

IN THE MATTER OF:)

Jim's Water Service, Inc.)
P.O. Box 2290)
Gillette, Wyoming 82716,)

Respondent.)
_____)

**INITIAL ADMINISTRATIVE ORDER
PURSUANT TO
SECTION 7003 OF RCRA**

I. JURISDICTION

The United States Environmental Protection Agency Region 8 ("EPA") issues this Order pursuant to its authority in section 7003 of the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act, or "RCRA"), as amended, 42 U.S.C. § 6901 *et seq.* ("the Act"), 42 U.S.C. § 6973.

II. INTRODUCTION

1. Jim's Water Service, Inc. ("JWS" or "Respondent") is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
2. JWS has handled "solid waste" within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27) at a commercial oil disposal facility known as the Cannon Land & Livestock commercial oilfield waste disposal facility, ("the facility") which is located in Converse County, Wyoming at SE 1/4, Section 34, Township 36 North, Range 71 West, 6th P.M.
3. Based upon evidence received, EPA has determined that Respondent's handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.
4. Pursuant to Section 7003(a) of the Act, EPA notified Mr. John Wagner, Administrator of the Water Quality Division, Wyoming Department of Environmental Quality (WDEQ) of this action on June 23, 2011. Also pursuant to Section 7003(a) of the Act, EPA notified Dr. Sherri Blanchard, County Health Officer, Converse County Health Department, on June 23, 2011.

5. Documents comprising the administrative record for this Order are referred to as "AR-#." An index to the administrative record is provided as Attachment 1 to this Order.
6. EPA takes this action pursuant to Section 7003 of the Act having determined that the issuance of this Order is necessary to protect human health and/or the environment.

III. PARTIES BOUND

7. This Order shall apply to and be binding upon Respondent, its employees, agents, successors and assigns.
8. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within two (2) calendar days of the date of Respondent's receipt of this Order or date of such retention, and shall condition all such contracts on compliance with terms of this Order.
9. Respondent shall give notice to EPA thirty (30) or more calendar days prior to transfer of ownership or operation of the facility.

IV. FINDINGS OF FACT

10. The facility is owned by Jim's Water Service of Gillette, Wyoming. (AR #34)
11. The facility supervisor reports directly to the president of JWS. (AR #34)
12. All drivers and laborers at the site report to the facility supervisor, and day-to-day operation and supervision is performed by the facility supervisor. (AR #34)
13. Management and budget decisions are controlled by the Gillette office. (AR #34)
14. The facility is located on a 20 acre site in northeastern Converse County, SE 1/4, Section 34, Township 36 North, Range 71 West, 6th P.M., approximately 5 miles west of State Highway 59 on Highland Loop Road, approximately 14 miles southwest of Bill, Wyoming, at latitude 43° 02' 34.5" N, longitude 105° 21' 39.7" W. (AR # 12)
15. The facility has been in operation since 1983. (AR #12)
16. Structures at the facility include: three (3) 1000 bbl storage tanks; sixteen (16) 400 bbl storage tanks; one (1) 500 bbl storage tank; one (1) evaporation pond measuring approximately (395' x 510'); and one (1) skim pit measuring approximately 110' x 110'. Netting has been placed on the skim pit only. (AR #1, 12)

17. The facility receives produced water, containing oil, from oil field production operations, which is trucked into the facility and deposited into the skim pit. Oil rises to the surface of the pit and separates from the water. The separated oil is removed from the pits with a vacuum truck and stored in the storage tanks. The process water is drained into the adjacent evaporation pond through an underground pipe. Pursuant to a permit issued by the WDEQ, oil is not to be discharged into the evaporation pond. The water is disposed of through evaporation. (AR #1, 12, 21)
18. On June 19, 1997, inspectors from EPA, the U.S. Fish and Wildlife Service (USFWS), WDEQ, and the Wyoming Oil and Gas Commission (WOGC) inspected the facility. Accumulated oil was found on the evaporation pond. Evidence of spills was detected from the tanks, the unloading area and the evaporation pond. No wildlife mortalities were detected. (AR #1, 2)
19. On March 31, 1998, inspectors from the EPA, USFWS and WDEQ inspected the facility. An oil sheen was found on the evaporation pond, and the soil on the bank of the pond was stained with oil. JWS agreed to provide WDEQ with an operation plan to address the accumulation of oil on the evaporation pond by May 1, 1998. (AR #17)
20. Respondent failed to submit the operation plan by the May 1, 1998, deadline.
21. After notification from WDEQ, in a letter dated May 29, 1998, Respondent advised WDEQ that it would take steps to solve the "recurring oil release to the evaporation pond." It further advised that it would take spill control measures to contain future releases. (AR #5)
22. On September 15, 1998, inspectors from EPA, USFWS and WDEQ inspected the facility. Oil was found on the ground around a storage tank located on the bank of the evaporation pond and evidence showed that oil had flowed into the evaporation pond. Heavy oil stains were found on the north bank of the evaporation pond. (AR #17)
23. JWS submitted a "Spill Prevention, Control and Countermeasures Plan" dated October 12, 1998, to the EPA. The plan provided for measures to control spills of oil, and particularly provided that spills or leakage from the storage tanks would be directed to the skim pit. (AR #12)

24. On January 22, 1999, WDEQ issued a Notice of Violation (NOV) to JWS, due to the presence of oil in its evaporation pond in violation of its permit and due to the release of oil from the storage tank to the ground and the evaporation pond. JWS was ordered to: 1) submit a plan and detailed schedule to remove the oil from the evaporation pond and its embankments by May 1, 1999; 2) submit an operation and maintenance plan within sixty days describing operation of the facility to minimize the amount of oil introduced to the skim pit, eliminate the presence of oil in the evaporation pond, and establish procedures to address discharges of oil from the skim pit to the evaporation pond; and 3) either remove the storage tank from the vicinity of the evaporation pond or take steps to prevent leaks from entering the evaporation pond. (AR #21)
25. In a letter dated February 19, 1999, to WDEQ, JWS responded to the NOV and stated that the oil had been removed from the evaporation pond and that JWS would remove the oil stained material from the embankments. JWS also stated it had determined that there had been too much oil in the skim pit, resulting in releases to the evaporation pond, and that it would vacuum the oil from the skim pit more frequently to prevent this from happening in the future. JWS also stated it would repair a small hole in the storage tank and allow more freeboard in the tank to prevent future leaks. (AR #23)
26. JWS did not submit an operation and maintenance plan within sixty days of receipt of the NOV.
27. On November 7, 2001, inspectors from the EPA, USFWS and WDEQ inspected the facility. The inspectors discovered that the netting over the skim pit was sagging and the shoreline at the evaporation pond was oily. (AR #27)
28. On November 19, 2001, USFWS issued a warning letter to JWS stating that the netting at the skim pit had to be replaced because it was in contact with the fluids and had several small holes which would allow small songbirds to enter the pits. USFWS included a list of requirements for effective netting, including the fact that the netting should be suspended 4 to 5 feet above the fluids. (AR #28)
29. On November 26, 2001, the EPA issued a warning letter to JWS ordering JWS to take all necessary remedial actions to address the sagging netting at the skim pit within ninety (90) days. (AR #29)
30. In a letter dated February 28, 2002, to the EPA, JWS responded to the warning letter stating that it had purchased new netting which would be installed at the skim pit within approximately 4 weeks. (AR #30)
31. In a letter dated April 15, 2002, to the EPA, JWS stated that new netting had been installed at the skim pit as of March 29, 2002. (AR #31)

32. On June 17, 2002, inspectors from the EPA and USFWS inspected the facility. The inspectors confirmed that the netting had been replaced and had been properly installed. (AR #32)
33. On December 31, 2002, the EPA sent a letter to JWS, confirming that adequate framework and netting replacement had been accomplished at the skim pond, and therefore, the matter was closed. (AR #33)
34. On February 17, 2003, JWS submitted an "Operation and Maintenance" (O & M) plan for the Facility to WDEQ. (AR #34)

35. In the O & M plan, JWS stated:

All trucks shall discharge through the skim pits, no water is to be put directly into the evaporation lagoon(s).

The oil skim pits are oil-covered and are fenced and covered to prevent animals and birds from entering the pits. Fences must be kept effective in preventing small animals (ie rabbits) and large (deer and antelope) from entering the pits. Bird netting shall be kept above the pits at all times, and rips, sagging areas, or storm damage shall be repaired in a timely manner.

The normal condition of the lagoon is when the surface of the water is free from any accumulated oil. Oil on the surface of the lagoon is an abnormal situation, and requires corrective action be taken. The evaporation lagoon is too large to be effectively netted against birds, and birds regularly land on the lagoons. Oil on the surface of the lagoon can cause injury or death to birds who land on the water.

The lagoon is observed daily for the presence of oil. When oil is observed the first step is to determine where the oil came from and why. The second step is to remove the oil from the water surface, and then to remove any stained soil material from the bank to prevent oil in the banks from seeping back into the water. (AR #34)

36. On August 23, 2004, inspectors from the EPA and USFWS inspected the facility. The inspectors found that the entire shoreline around the evaporation pond was oily but did not observe any oil on the pond surface. A bird mortality was found on the shoreline of the pond. The netting was not secured in some places at the base of the framework, and the inspectors observed rabbits going under the netting into the skim pit area. (AR #34, 35)
37. On August 11, 2005, inspectors from the EPA, USFWS and WDEQ inspected the facility during an unannounced visit. The inspectors found that the netting was still not secured at the base and rabbits were getting inside. The evaporation pond had an oily shoreline,

and oil was on the pond's surface. The remains of an oily mule deer fawn were found on the southwest corner of the evaporation pond. (AR #36, 37)

38. On August 17, 2006, inspectors from the EPA and USFWS inspected the facility. The inspectors observed that the netting skirt needed some repairs. Oil was found on the evaporation pond surface and on the shoreline. The inspectors contacted Larry Baccari of Baccari & Associates, a contractor for JWS, and advised him that the problems needed to be addressed and, in light of the upcoming fall migration, instructed him that the remedies needed to be completed no later than October 5, 2006. (AR #38)
39. On September 14, 2006, inspectors from the EPA and USFWS inspected the facility. The inspectors observed that some repairs had been made in the netting but there were minor tears and the skirt needed to be reanchored to the ground in places. Rabbits were observed inside the netting. Oil was observed on the surface of the evaporation pond and the on the shoreline. A grebe carcass was found on the pond's shoreline, and a live coot was seen swimming on the pond. A songbird carcass, coated in oil, was found in a trash can near the skim pit. A sheen of oil was observed rising from the underwater discharge pipe leading from the skim pit into the evaporation pond. (AR #39, 40)
40. On December 4, 2006, USFWS issued a letter to JWS, instructing JWS that it must immediately remove the oil from the surface of the evaporation pond and that measures must be taken to prevent future releases of oil from the skim pit to the evaporation pond. (AR #41)
41. On June 7, 2007, inspectors from the EPA, USFWS, and WDEQ inspected the facility. The inspectors observed oil on the surface of the evaporation pond and an oil stain on the shoreline. The netting at the skim pit needed to be secured along the entirety of the vertical netting skirt. (AR #42)
42. On August 24, 2007, inspectors from the EPA, USFWS, and WDEQ inspected the facility. The inspectors observed oil on the surface of the evaporation pond. The skirt on the netting over the skim pit was in need of maintenance and repair. Accumulations of oil were found at the base of several tanks. (AR #43)
43. On October 12, 2007, inspectors from the EPA and USFWS inspected the facility. The inspectors observed a sheen of oil on the northern and southern shorelines of the evaporation pond and a patch of heavy crude oil floating along the western shoreline. The rocks along the northern shoreline were heavily oiled. An oily duck carcass and an oily songbird carcass were found on the shoreline. (AR #44, 45)

44. On October 15, 2007, Randy Lamdin, the EPA inspector, contacted Larry Baccari, advised him of these problems and instructed him that remedial work needed to be conducted immediately. Lamdin faxed a copy of the inspection reports to Baccari on October 16, 2007. (AR #46)
45. On November 7, 2007, inspectors from the EPA, USFWS and WDEQ inspected the facility. The inspectors observed an oily sheen over the pond, as well as a small patch of crude oil floating on the surface. The rocks on the shoreline were heavily oiled. The oily carcass of a coot was found on the shoreline and the oily carcass of another aquatic bird was found near the skim pit inside the netting. (AR #47, 48)
46. On May 29, 2008, inspectors from the EPA, USFWS, and WDEQ inspected the facility. The inspectors observed an oil sheen over the evaporation pond and a small, emulsified, brownish oil patch on the surface. (AR # 49)
47. On September 8, 2008, inspectors from the EPA and USFWS inspected the facility accompanied by Ed Pettijohn, facility supervisor of JWS. Pettijohn explained the steps that had been taken to reduce the oil in the evaporation pond. No noticeable oil or sheen was observed over the evaporation pond. (AR #50)
48. On May 13, 2009, inspectors from the EPA, USFWS, and WDEQ inspected the facility. A rainbow sheen was observed on the pond, and oil was observed on the surface. The shoreline was oil stained. A trucker from JWS, who was at the facility, advised the inspectors that the oil in the evaporation pond was discharged by an inexperienced driver who had mistakenly deposited his load directly into the evaporation pond instead of into the skim pit. (AR #51, 52)
49. On July 7, 2009, the EPA issued a warning letter to JWS instructing JWS to remove the oil from the evaporation pond within thirty (30) days. (AR #53)
50. On July 13, 2009, USFWS issued a warning letter to JWS, instructing JWS to remove the oil from the evaporation pond immediately. (AR #54)
51. On July 16, 2009, JWS responded to the EPA, stating that it had skimmed the oil from the surface of the evaporation pond and had continued to skim the surface in an attempt to remove the sheen. (AR #55)
52. On July 16, 2009, Larry Baccari sent an email to Randy Lamdin stating that the “non-oily material” on the surface of the evaporation pond was the same as material that had risen from the bottom of the pond in previous years, and that JWS would remove it and would continue to remove it whenever it reappeared. (AR #56)

53. On July 17, 2009, Lamdin responded via email to Baccari, advising Baccari of the conversation the inspectors had with the JWS truck driver that the material was oil that should have been deposited into the skim pit. Lamdin reemphasized that it was of paramount importance that the oil be removed from the evaporation pond prior to the start of the fall migratory bird season. (AR #56)
54. On August 20, 2009, inspectors from the EPA, USFWS, and WDEQ inspected the facility. The inspectors observed oil on the southeast corner of the evaporation pond and a minor amount of oil along the shoreline. (AR #57)
55. On September 21, 2010, inspectors from the EPA, USFWS, and WDEQ inspected the facility during an unannounced visit. Two live grackles were found inside the netting at the skim pit. The inspectors herded the birds out of the netting and closed the hole. Five oily songbird carcasses were found inside the netting at the skim pit. An uncovered bucket of oil was found near the unloading area to the skim pit. Oil was observed on the surface of the evaporation pond, and an oily grebe carcass was found on the shoreline. A live grebe was seen swimming on the evaporation pond. (AR #58, 59)

V. CONCLUSIONS OF LAW

56. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15).
57. Wastes received by, and handled at, the Facility are "solid waste[s]" as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27).
58. Respondent has contributed to and/or is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Facility within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.
59. Respondent's handling, storage, treatment, transportation or disposal of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.

VI. ORDER

Based on the above, and on other information contained in the administrative record for this Order, the EPA has determined that the activities required by this Order are necessary to protect public health and/or the environment. EPA therefore orders Respondent to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

VII. WORK TO BE PERFORMED

60. CORRECTIVE MEASURES

- A. Within ten (10) calendar days of receipt of this Order, Respondent shall evaluate all corrective measures necessary at the Facility to protect wildlife (including migratory birds), develop a Corrective Measures Work Plan (“CM Work Plan”) and submit such CM Work Plan to the EPA for approval.
- B. The CM Work Plan shall describe:
 - i. the selected corrective measures, including, but not limited to, the corrective measures described below in Subsection C of this section;
 - ii. an operations and maintenance plan which will result in uninterrupted effectiveness of the chosen corrective measures (to include submission of a revised site specific operations and maintenance plan); and
 - iii. the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The CM Work Plan shall demonstrate that the personnel and contractor(s) possess all appropriate qualifications.
- C. The corrective measures shall include at a minimum, but not be limited to:
 - i. methods for permanently and continuously eliminating contact by wildlife with any oil at and around the skim pit, which include properly covering the skim pit with both horizontal and vertical netting and plans for ongoing inspection and maintenance of the netting and netting framework to ensure that the netting is consistently suspended a minimum of four feet above the surface of the pit, as well as timely repairs in the netting, including hole repair, and ensuring that the netting skirts are continuously anchored to the ground without any gaps that would allow songbirds or other small wildlife to enter the skim pit;
 - ii. improved methods for preventing oily materials from being discharged into the evaporation pond from the skim pit, tanks, or any other source;
 - iii. permanently and continuously eliminating contact by wildlife with any oily substances that may be released into the evaporation pond, including timely, regular and effective skimming of the pond to address oil sheens and floating oil materials, and timely cleanup of oily shorelines;

- iv. monitoring and maintenance of the storage tanks to immediately repair any leaks, and maintaining sufficient freeboard in the tanks to prevent overtopping;
 - v. proper training of drivers and other personnel to prevent releases of oily substances into the evaporation pond, spills onto the ground, overtopping of storage tanks, and leaving open containers of oily materials; and
 - vi. cleaning up and properly disposing of any oil-stained/oil-contaminated soils and other wastes generated at the Facility.
- D. The CM Work Plan shall specify that the corrective measures shall be commenced within ten (10) calendar days of EPA approval of the CM Work Plan.
- E. The EPA will notify Respondent in writing of any comments it may have on the CM Work Plan, which must be incorporated into the CM Work Plan before it can be approved.
- F. Respondent shall incorporate the EPA's comments into the CM Work Plan and resubmit the CM Work Plan to the EPA within five (5) calendar days of receipt of the EPA's comments.
- G. Upon receipt of Respondent's CM Work Plan with EPA comments incorporated, the EPA will notify Respondent in writing of its approval, approval with modifications, or disapproval of the CM Work Plan. If approved with modifications, the EPA notification correspondence will serve as an addendum to the final CM Work Plan.
- H. Upon receipt of the EPA's written approval or approval with modifications, Respondent shall implement the corrective measures in accordance with the procedures and schedules contained in the CM Work Plan as approved by EPA.
- I. Within fifteen (15) calendar days of completing the work as set forth in the CM Work Plan as approved by the EPA, Respondent shall provide a written Corrective Measures Summary Report to the EPA detailing, and confirming through contractor certification and photographic or videographic evidence, the completion of the activities conducted pursuant to the CM Work Plan. The Corrective Measures Summary Report, contractor certification and photographs/video shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented.

61. IMMEDIATE PUBLIC NOTICE

- A. Respondent shall promptly post a notice at the site that the improper handling of oily materials at the facility presents an endangerment to wildlife, including migratory birds, and any person who causes migratory bird mortalities through the improper handling of oily materials is subject to criminal fines and penalties under the Migratory Bird Treaty Act, 16 U.S.C. § 703.

62. EMERGENCY ACTION

- A. In the event Respondent identifies a threat to human health and/or the environment at the Facility at any time during implementation of this Order which warrants more immediate action than pursuant to any requirement of this Order, Respondent shall orally notify the EPA Project Manager identified below not more than twenty-four (24) hours after discovery and notify the EPA, USFWS and WDEQ in writing not more than ten (10) days after such discovery, summarizing the nature, immediacy and magnitude of such threat(s).
- B. Proper notification, as required in this section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), as amended.
- C. If EPA, USFWS or WDEQ identifies immediate threat(s) at the Facility at any time during implementation of this Order, the EPA will notify Respondent orally and provide subsequent notification in writing. If the EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat(s).
- D. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless the EPA does not provide a written description of such requirements to the Respondent within ten (10) calendar days of oral notification.

63. ADDITIONAL WORK

If EPA determines that additional work is necessary, EPA will inform Respondent of such additional requirements.

64. PUBLIC PARTICIPATION

EPA may make any work plan or other document available to the public for review and comment for an appropriate period prior to taking final action on such document.

65. REPORTING

- A. Commencing the first full month after the effective date of this Order, Respondent shall provide the EPA, USFWS and WDEQ with monthly progress reports which shall include, at a minimum, the following information:
 - i. activities conducted at the Facility in the previous month;
 - ii. if necessary, summaries of any problems encountered during the previous month and how the problems were or are being addressed;
 - iii. changes in work performed at the Facility from that projected in the previous monthly progress report; and
 - iv. projected work for the next reporting period.
- B. These progress reports are to be submitted by the tenth calendar day of the month following the monthly reporting period.

66. CERTIFICATION

- A. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of JWS. A person is a "duly authorized representative" only if: (1) the authorization is made in writing; (2) the authorization specifies either an individual or position having responsibility for overall operation of the facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the EPA Project Manager designated below.

B. The certification shall be in the following form:

I certify that the information contained in or accompanying this **[type of submission]** is true, accurate, and complete. As to **[the/those identified portion(s)]** of this **[type of submission]** for which I cannot personally verify **[its/their]** accuracy, I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my personal knowledge, or my inquiry of the person or 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 fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

VIII. ACCESS

Respondent shall permit full access to EPA, USFWS, and WDEQ, and their authorized representatives, as may be necessary for the purposes of oversight of and implementation of this Order.

IX. GENERAL PROVISIONS

67. All plans and documents submitted under any section of this Order shall, upon approval by the EPA, be incorporated by reference into this Order as if set forth fully herein.
68. Respondent shall obtain any permits or approvals which are necessary to perform work on or outside the facility under applicable law and shall submit timely applications and requests for any such permits and approvals.
69. Respondent shall employ sound scientific, engineering, and construction practices and principles under this Order.

X. AVAILABILITY AND RETENTION OF INFORMATION

70. Respondent shall make available to the EPA, and shall retain, during the pendency of this Order and for a period of five (5) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.
71. After the document retention period, Respondent shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents and, upon request by EPA, shall deliver the documents to EPA.

XI. CONFIDENTIALITY CLAIMS

Respondent may assert confidentiality claims pursuant to 40 C.F.R. Part 2. Information determined to be confidential by the EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, the public may be given access to such information without further notice to Respondent.

XII. AVAILABILITY OF ADMINISTRATIVE RECORD

The administrative record supporting this Order shall be available for public review at the Records File Room, the EPA Region 8, 1595 Wynkoop, Denver, Colorado from 8 a.m. to 4 p.m., every federal business day.

XIII. NOTICES, CONTACTS AND EPA PROJECT MANAGER

Whenever, under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. The following EPA person is designated as the Project Manager for the EPA for this Order.

As to the EPA:

Mr. Randy Lamdin
EPA Region 8, 8ENF-RC
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6350

As to USFWS:

Mr. Pedro Ramirez, Jr.
Ecological Services
Wyoming Field Office
U.S. Fish & Wildlife Service
5353 Yellowstone Road
Suite 308A
Cheyenne, Wyoming 82009
(307) 772-2374 ext. 236

As to WDEQ:

Mr. John Wagner
Administrator
Water Quality Division
Wyoming Department of Environmental Quality
Herschler Building, 4th Floor
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7781

If the date for submission of any item or notification required by this Order falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next federal working day following the weekend or holiday.

XIV. RESERVATION OF RIGHTS

72. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary.
73. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, including under CERCLA or any other applicable law.
74. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable law or regulation and with any requirement of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request or require that Respondent perform additional tasks, and the right to perform any portion of the work herein.

75. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable, state, federal, or other law, regulation, permit, or other requirement.

XV. FAILURE TO COMPLY

Pursuant to Section 7003(b) of the Act, 42 U.S.C. § 6973(b), and 40 C.F.R. 19, any failure by Respondents to comply with this Order shall subject Respondent to civil penalties of not more than \$7,500.00 for each day of each failure to comply with this Order.

XVI. OPPORTUNITY TO CONFER, AND MODIFICATION

76. Respondent has the opportunity confer informally with the EPA concerning the terms and applicability of this Order. If Respondent desires a conference, Respondent must contact the EPA Region 8 by telephone to schedule such conference within five (5) calendar days of receipt of this Order by Respondent and follow up this request in writing immediately thereafter.
77. 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 stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.
78. If the EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, the EPA will modify the Order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondent.
79. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by the EPA and filed with the Regional Hearing Clerk.

XVII. NOTICE OF INTENT TO COMPLY

80. Respondent shall provide, within two (2) days from receipt of this Order, or within twenty-four (24) hours from the date Respondent confers with EPA pursuant to Section XVI of the Order, written notice to Mr. Randy Lamdin, at the address set forth above, stating whether Respondent will comply with the terms of this Order. The absence of a response by the EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondent may make in its notice, and shall not affect Respondent's obligation to implement this Order.

81. Failure of Respondent to provide notification to EPA's Project Manager of intent to comply within this time period is a violation of this Order.

XVIII. NOTICE OF NON-LIABILITY OF EPA

The EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its employees, contractors, subcontractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XIX. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Order shall not be affected thereby and shall remain in full force.

XX. EFFECTIVE DATES

82. This Order shall become effective on the date this Order is filed with the Regional Hearing Clerk and mailed to Respondent.
83. Modifications made by the EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

XXI. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from the EPA that Respondent has demonstrated, to the satisfaction of the EPA, that the terms of this Order, including any additional tasks determined by the EPA to be required pursuant to this Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's continuing obligations hereunder, including, but not limited to: compliance with all applicable laws and regulations, record retention, reservations of rights, other claims and notice of non-liability of the EPA.

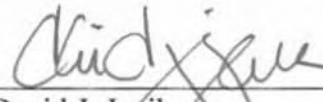
IT IS SO ORDERED:

ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 6/23/11

By: 
Kelcey Land, Director
CERCLA/RCRA Technical Enforcement
Program

Date: 6.23.11

By: 
David J. Janik
Supervisory Enforcement Attorney

Jim's Water Service – Cannon Land & Livestock
Commercial Oilfield Waste Disposal Facility (COWDF)
USEPA ID# WYR000201152 (RCRA)

RCRA 7003 – Imminent and Substantial Endangerment Order
Administrative Record

1. 6/19/97 Problem Oil Pit (POP) Inspection Checklist w/photographs, for JWS-Cannon COWDF, author McKenzie (WDEQ).
2. 6/19/97 Problem Oil Pit (POP) Inspection Checklist w/o photographs, for JWS- Cannon COWDF, author Dunning (USEPA).
3. 8/5/97 POPs co-regulators' 1000-1230 MDT meeting notes/summary by Site ID#(WY-97-53 is Jim's Water Service – Cannon COWDF's USFWS assigned "aerial survey" nomenclature), author unknown.
4. 8/5/97 POPs co-regulators' Team Compliance Recommendation Matrix for Jim's Water Service, Cannon Pit, Site ID# Waypoint 53, author unknown.
5. 5/29/98 Baccari & Associates POPs related letter to McKenzie (WDEQ), for JWS – Blake COWDF and JWS – Cannon COWDF, author Baccari (Baccari & Associates).
6. 6/16/98 WDEQ-WQD groundwater monitoring related file review for JWS – Cannon COWDF, author Fischer (WDEQ).
7. 7/8/98 WDEQ-WQD draft groundwater monitoring/quality related letter to Baccari (Baccari & Associates), for JWS – Cannon/McBeth/ Werner COWDFs', w/individual file reviews as enclosures (JWS – Cannon COWDF 6/16/98), author Beach (WDEQ).
8. 7/14/98 WDEQ-WQD e-mail (Beach) to multiple WDEQ-WQD staff and USEPA (Lillich) – Rescheduling of JWS meeting, again.
9. 7/24/98 WDEQ-WQD e-mail (Beach) to USEPA (Lillich) – JWS Meeting.
10. 7/29/98 USEPA e-mail (Lillich) to WDEQ-WQD (Beach) – JWS Meeting.
11. 9/18/98 Baccari & Associates cover letter and JWS "Proposal for Research, Monitoring and Operation of Water Disposal Facilities" (9/98), to include Proposal C – Cannon Land & Livestock Facility to WDEQ-WQD (Beach) and USEPA (Lillich), author Baccari (Baccari & Associates).

12. 10/12/98 JWS – Cannon Spill Prevention, Control and Countermeasures Plan (SPCC), prepared/certified by Baccari (Baccari & Associates) And signed by Rodgers (JWS).
13. 10/14/98 POPs co-regulators' meeting agenda, to include review of Baccari Groundwater Protection Proposal for JWS Disposal Facilities and co-regulators' options for same.
14. 11/5/98 WDEQ-WQD proposal review of JWS' 'Proposal for Research, Monitoring and Operation of Water Disposal Facilities', to include Proposal A – McBeth Facility, Proposal B – Werner Facility and Proposal C – Cannon Facility, author Fischer (WDEQ).
15. 11/23/98 WDEQ-WQD draft/undated letter to Baccari (Baccari & Associates) concerning, 'Results of Nov 23rd Meeting' regarding JWS proposal for additional groundwater monitoring and site characterization work at the permitted disposal facilities for McBeth, Werner and Cannon, author Beach (WDEQ).
16. 11/24/98 WDEQ letter to Baccari (Baccari & Associates) concerning, 'Results of Meeting held November 23, 1998', author Beach (WDEQ).
17. 12/15/98 SAIC submittal to USEPA (Lillich) of USEPA POPs co-regulators' JWS – Cannon Land & Livestock 3/31/98 and 9/15/98 combined inspection reports w/photographs, author(s) Ganter and/or Moriarty (SAIC).
18. 1/11/99 WDEQ-WQD e-mail (Beach) to USEPA (Lillich) – Jim's Water Service facilities.
19. 1/11/99 USEPA e-mail (Breedon) to WDEQ-WQD (Fischer) – Jim's Water Service facilities.
20. 1/11/99 USEPA e-mail (Breedon) to USEPA (Lillich) – Jim's Water Service facilities.
21. 1/22/99 WDEQ cover letter, signatories Hemmer and Beach (WDEQ), and Notice of Violation and Order, issued to Jim's Water Service for COWDF known as Cannon Land & Livestock, Docket # 3042-99 latter dated 1/28/99.

22. 2/5/99 Jim's Water Service, in the matter of WDEQ Notice of Violation and Order, Docket # 3042-99, Petition for Hearing and Protest to Wyoming Environmental Quality Council (WEQC), author Rasmussen (Badley & Rasmussen, P.C.).
23. 2/19/99 Baccari & Associates POPs related technical letter to WDEQ (Beach), in response to WDEQ Notice of Violation and Order, issued to Jim's Water Service – Cannon Land and Livestock, Docket # 3042-99, author Baccari (Baccari & Associates).
24. 9/14/99 Baccari & Associates cover letter and 'JWS - Cannon Land & Livestock Facility Report of Investigation' (9/9/99), to USEPA (Lillich), author Rinaldo (Baccari & Associates).
25. 11/24/99 WDEQ-WQD review/comments on JWS- Cannon COWDF Report of Investigation (ROI) site investigation (groundwater section), author Fischer (WDEQ).
26. 11/29/99 WDEQ-WQD letter to Rodgers (Jim's Water Service) w/ROIs' WDEQ groundwater program reviews, dated 10/29/98 and 11/5/98, on JWS – McBeth, Cannon and Werner COWDFs, author Fischer (WDEQ).
27. 11/7/01 USEPA POPs inspection report on JWS – Cannon COWDF with photograph (WY-97-53), author/signed (Lamdin on 12/31/01).
28. 11/19/01 USFWS 'Warning Letter' to Jim's Water Service (Rodgers) and USFWS POPs photographs taken during POPs inspection on 11/7/01, of JWS – Cannon (1), author/signed (Ramirez/Long on 11/19/01).
29. 11/26/01 USEPA POPs Warning Letter to Jim's Water Service (Rodgers), about JWS – Cannon and Werner COWDFs, author/signed (Lamdin/Kercher).
30. 2/28/02 Baccari & Associates POPs related technical letter to USEPA (Kercher), in response to USEPA Warning Letter, issued to Jim's Water Service (Rodgers) on 11/26/01, author (Baccari).
31. 4/15/02 Baccari & Associates POPs related technical letter (netting) to USEPA (Kercher), in response to USEPA Warning Letter, issued to Jim's Water Service (Rodgers) on 11/26/01, author (Baccari).
32. 6/17/02 USEPA POPs inspection report on JWS – Cannon COWDF with photographs (WY-97-53/WYR000201152), author/signed (Lamdin on 12/27/02).

33. 12/31/02 USEPA POPs Return to Compliance Letter to Jim's Water Service (Rodgers), about JWS – Cannon and Werner COWDFs, author/signed (Lamdin/Kercher).
34. 2/10/03 JWS-Cannon Operation and Maintenance Plan, submitted to WDEQ post-1/28/99 WDEQ Notice of Violation and Order issuance and JWS' 2/5/99 Petition for Hearing and Protest to Wyoming Environmental Quality Council (WEQC).
35. 8/23/04 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WY-97-53/WYR000201152), author/signed (Lamdin on 1/7/05).
36. 8/23/04 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
37. 7/11/05 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WY-97-53/WYR000201152), author/signed (Lamdin on 8/1/05).
38. 7/11/05 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
39. 8/17/06 USEPA POPs inspection report on JWS – Cannon COWDF with photograph (WYR000201152), author/signed (Lamdin on 10/4/06).
40. 9/14/06 USEPA POPs inspection report on JWS – Cannon COWDF with photographs (WYR000201152), author/signed (Lamdin on 12/4/06).
41. 9/14/06 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
42. 12/4/06 USFWS 'Warning Letter' to Jim's Water Service (Rodgers) and USFWS POPs photographs taken during POPs inspection on 9/14/06, of JWS – Cannon (6), author/signed (Ramirez/Kelly).
43. 6/7/07 USEPA POPs inspection report on JWS – Cannon COWDF with photograph (WYR000201152), author/signed (Lamdin on 7/31/07).
44. 8/24/07 USEPA POPs inspection report on JWS – Cannon COWDF with photograph (WYR000201152), author/signed (Lamdin on 9/28/07).
45. 10/12/07 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WYR000201152), author/signed (Lamdin on 10/19/07).

46. 10/12/07 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
47. 10/15/07 USEPA Record of Communication (Lamdin) to Baccari & Associates (Baccari) advising of recent environmental conditions at JWS – McBeth, Werner and Cannon COWDFs (reference made to USEPA faxing Baccari & Associates copies of each facility’s Notice of Inspection on 10/16/07 at 0823 MDT).
48. 11/7/07 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WYR000201152), author/signed (Lamdin on 12/3/07).
49. 11/7/07 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
50. 5/29/08 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WYR000201152), author/signed (Lamdin on 6/16/08).
51. 9/8/08 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WYR000201152), author/signed (Lamdin on 10/22/08).
52. 5/14/09 USEPA POPs inspection report on JWS – Cannon COWDF with photograph and Notice of Inspection (WYR000201152), author/signed (Lamdin on 6/29/09).
53. 5/14/09 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
54. 7/7/09 USEPA POPs Warning Letter to Jim’s Water Service (Rodgers), about JWS – Cannon COWDF, author/signed (Lamdin/Land).
55. 7/10/09 USFWS “Warning Letter” to Jim’s Water Service (Rodgers), author/signed (Ramirez/Hicks).
56. 7/16/09 Jim’s Water Service POPs related technical letter to USEPA (Lamdin), in response to USEPA Warning Letter, issued to Jim’s Water Service (Rodgers) on 7/7/09, author (Pettijohn).
57. 7/16-17/09 E-mails between Baccari & Associates (Baccari) and USEPA (Lamdin) concerning the JWS – Cannon COWDF’s evaporation pond surface contamination.

58. 8/20/09 USEPA POPs inspection report on JWS – Cannon COWDF without photograph(s) but with Notice of Inspection (WYR000201152), author/signed (Lamdin on 12/3/09).
59. 9/21/10 USEPA POPs inspection report on JWS – Cannon COWDF with photographs and Notice of Inspection (WYR000201152), author/signed (Lamdin on 11/4/10).
60. 9/21/10 USFWS POPs inspection report on JWS – Cannon COWDF with photographs, author (Ramirez).
61. 11/3/10 E-mail with attachment from USFWS (Ramirez) to USEPA (Lamdin), attachment an historical POPs inspection summary for JWS – Cannon/McBeth/Werner COWDFs’ ‘takings’ of migratory birds under USFWS’ Migratory Bird Treaty Act (MBTA).