

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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REGION 8

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EPA REGION VIII
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Docket No. RCRA-08-2012-0001

IN THE MATTER OF:)

R360 Environmental Solutions, Inc.)
16945 Northchase Drive)
Houston, Texas 77060)

Respondent.)
_____)

**FIRST AMENDMENT TO
ADMINISTRATIVE ORDER
PURSUANT TO
SECTION 7003 OF RCRA**

I. JURISDICTION

The United States Environmental Protection Agency Region 8 (EPA) issues this amendment to administrative order (Amended Order) pursuant to its authority under 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

- A. EPA issued an administrative order (Order) to R360 Environmental Solutions, Inc. (Respondent) on April 6, 2012.
- B. Respondent timely notified EPA that Respondent intended to comply with the Order, and requested an opportunity to confer with EPA regarding the terms of the Order.
- C. An informal conference was held on April 24, 2012. Based on information presented by Respondent, EPA has concluded that the Order should be amended, and, therefore, is issuing this Amended Order. Where appropriate in this Amended Order, references to the Order are changed to Amended Order. In addition, the following sections of the Order are amended in part by this Amended Order: Section I – Jurisdiction; Section II – Introduction; Section VII – Work to be Performed (paragraph A.2); Section XVII – Opportunity to Confer, and Modification; Section XVIII – Notice of Intent to Comply.
- D. Respondent is a “person” within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).

- E. Respondent has handled “solid waste” within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27), at its commercial oilfield waste disposal facility in Sublette County, Wyoming (facility). The facility is commonly referred to as the Calpet facility.
- F. 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 (section 7003).
- G. Pursuant to section 7003(a) of the Act, EPA notified Mr. Dennis Lamb, Wyoming Department of Environmental Quality (WDEQ), of this action on or before April 3, 2012. Pursuant to section 7003(b) of the Act, EPA notified Dr. J. Thomas Johnston, Sublette County Public Health Officer, of this action on April 3, 2012.
- H. Documents comprising the administrative record for this order Amended Order are referred to as “AR-#”. An index to the administrative record was provided as Attachment 1 to the Order. Copies of each document in the administrative record were provided to Respondent after the informal conference.
- I. EPA takes this action pursuant to section 7003 having determined that the issuance of this Amended Order is necessary to protect human health or the environment.

III. PARTIES BOUND

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

IV. FINDINGS OF FACT

- A. On or about May 5, 2011, representatives of EPA, WDEQ, and the United States Fish and Wildlife Service (USFWS) inspected the facility. (AR-1, 2) Inspectors observed that cell 4 was completely (100%) covered with oily waste. Multiple oily sheens were observed on the surface of cell 6 (mistakenly referred to as cell 9 in AR-1, 2, 3, 4). Inspectors also observed that the liquid surface in a smaller pit near cell 6, possibly used for tank bottom waste management, was approximately one quarter (25%) covered with oily waste. While

approximately 25% of the eastern part of cell 4 was covered with netting, the rest of cell 4, cell 6, and the smaller pit near cell 6, were completely open to access by wildlife.

- B. By letter dated June 17, 2011, USFWS informed Respondent of the conditions observed at the facility, the threats to wildlife posed by these conditions, and provided a number of suggested general operational improvements to abate the threats to wildlife at the facility. (AR-3)
- C. By letter dated June 29, 2011, EPA informed Respondent of the conditions observed at the facility, the threats to wildlife posed by these conditions, and requested information regarding actions Respondent had taken, or intended to take to abate the threats to wildlife at the facility. EPA also requested that measures to protect wildlife be completed by September 1, 2011 (the approximate start date of the fall migration through this area). (AR-4)
- D. On or about October 4, 2011, representatives of EPA, WDEQ, and USFWS inspected the facility. (AR-5, 6) Inspectors observed that cell 4 was almost completely (90-100%) covered with oily waste, and that cell 6 was approximately three quarters (75%) covered with oily waste. During the inspection the inspectors were informed that cell 6 was being used for disposal of a variety of oil and gas exploration and production wastes in addition to produced water, including: drilling muds, sludges, waste fluids from hydraulic fracturing, and miscellaneous oil/paraffin based hydrocarbons. Inspectors were informed that the smaller pit near cell 6 observed during the May 5, 2011, inspection had been reclaimed. Inspectors observed that the liquid surface in a new smaller pit near cell 6 (also apparently used to manage tank bottom wastes) was approximately one quarter (25%) covered with oily waste. While approximately 25% of the eastern part of cell 4 was covered with netting, the rest of cell 4, cell 6, and the smaller pit near cell 6, were completely open to access by wildlife. (AR-5, 6)
- E. By letter dated November 28, 2011, USFWS informed Respondent of the conditions observed at the facility during the October inspection, including the observation that the threats to wildlife posed by facility conditions had increased since the May 2011 inspection. USFWS urged Respondent to take immediate action to abate the increased threats to wildlife at the facility. (AR-7)
- F. By letter dated December 19, 2011, Respondent informed USFWS of actions Respondent already had taken at the facility, and Respondent's plans for engineering and operational changes at the facility, including: managing all tank bottoms in heated tanks before disposal into cell 4; completely netting cell 4; allowing only solids to be disposed into cell 6 (upon completion of a new unloading area); and use of cell 9 for future liquid mud disposal, with a comprehensive set of skimming operations to minimize the amount of oil on the surface at any given time. (AR-8)

V. CONCLUSIONS OF LAW

- A. Respondent is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. 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).
- C. Respondent has contributed 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.
- D. 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.

VI. ORDER

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

VII. WORK TO BE PERFORMED

A. CORRECTIVE MEASURES

- 1. Respondent shall evaluate all corrective measures necessary to protect wildlife, including migratory birds and threatened or endangered species, at the facility. The corrective measures shall include at a minimum, but not be limited to methods for permanently and continuously eliminating contact by wildlife with any oily wastes throughout the facility, including remediation of shorelines and other ground surfaces as presently necessary and as may be necessary in the future. Synthetic liners at un-netted cells also must be kept oil free, to prevent chronic oiling of the liquids in these cells.
- 2. On or before May 17, 2012, Respondent shall submit by certified mail to EPA, with a copy to USFWS and WDEQ, a work plan for the facility (Work Plan).

3. The Work Plan shall describe:
 - a) all work conducted as of the date of transmittal of the Work Plan to abate threats to wildlife at the facility, as well as changes in operation of the facility that have already been implemented to abate threats to wildlife;
 - b) in detail, the corrective measures selected by Respondent after the evaluation required under paragraph VII.A.1. above; and
 - c) a detailed schedule for completion of all remaining work described in the Work Plan.
4. The Work Plan shall include:
 - a) an operations and maintenance plan which will result in uninterrupted effectiveness of all corrective measures; and
 - b) the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Amended Order. The Work Plan, or any supplements to the Work Plan shall demonstrate that such personnel and contractor(s) possess all appropriate qualifications.
5. EPA will notify Respondent in writing of any comments it may have on the Work Plan which must be incorporated into the Work Plan before it can be approved; or EPA will approve the Work Plan as submitted. EPA also may approve the Work Plan with EPA's comments incorporated into the approved Work Plan.
6. If EPA affords Respondent an opportunity to incorporate EPA's comments, Respondent shall incorporate EPA's comments into the Work Plan and resubmit the Work Plan to EPA within seven (7) calendar days of receipt of EPA's comments.
7. Upon receipt of the revised Work Plan EPA will notify Respondent in writing of its approval, approval with modifications or disapproval of the Work Plan. If approved with modifications, the EPA notification correspondence shall serve as an addendum to the final Work Plan and shall be considered part of the Work Plan.
8. Upon receipt of EPA's written approval or approval with modifications, Respondent shall implement the Work Plan in accordance with the procedures and schedules contained in the Work Plan as approved by EPA.

9. If EPA concludes it must disapprove the Work Plan after Respondent has had the opportunity to incorporate EPA's comments, EPA may choose to draft a Work Plan which EPA will transmit to Respondent as the approved Work Plan. EPA may also choose to request that a court order Respondent to take action as is necessary to protect health or the environment at the facility.
10. Within fifteen (15) calendar days of completing the work as set forth in the approved Work Plan, Respondent shall provide a written Corrective Measures Summary Report ("CMSR") to EPA detailing the completion of the activities conducted pursuant to the Work Plan, including confirmation through photographic evidence. The CMSR, with photographs, shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented. All analytical results of sampling conducted to determine compliance with the workplans or Work Plan will be submitted to EPA within three (3) days of receipt of such results. EPA may request any and all information related to such sampling and analysis efforts, including quality assurance and quality control information. Respondent must provide such information within three (3) days of receipt of EPA's request.
11. EPA shall notify Respondent as soon as possible after receipt of the CMSR whether the CMSR is accepted and all work, except ongoing operations and maintenance work, is completed under this Amended Order.

B. EMERGENCY ACTION

1. In the event Respondent identifies a threat to human health or the environment at the facility at any time during implementation of this Amended Order, including during the operation and maintenance period, which warrants more immediate action than pursuant to any requirement of this Amended Order, Respondent shall orally notify the EPA Project Manager identified below not more than twenty-four (24) hours after discovery and notify EPA, FWS, and WDEQ in writing not more than three (3) calendar days after such discovery, summarizing the nature, immediacy and magnitude of such threat(s). Threats to the environment shall include, but not be limited to, the discovery of any mortality of, or injury to any wildlife, and in particular to any animal subject to the Endangered Species Act or the Migratory Bird Treaty Act at the facility.
2. Proper notification as required in this Amended Order, 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, section 304 of the Emergency Planning and Community Right to Know Act, the Migratory Bird Treaty Act, or State law.
3. If 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).

4. If EPA, FWS, or WDEQ identifies such a threat at the facility at any time during implementation of this Amended Order, EPA will notify Respondent orally and provide subsequent notification in writing. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat.
5. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Amended Order by reference and are immediately enforceable, unless EPA does not provide to Respondent in writing a description of such requirements within five (5) calendar days of oral notification.

C. ADDITIONAL WORK

If EPA determines that additional work is necessary, EPA will inform Respondent of such additional requirements in writing, including a written justification for requiring the specified additional work and Respondent shall conduct such work according to EPA direction.

D. PUBLIC PARTICIPATION

1. Because the spring migration is imminent, and the threat of mortality to wildlife is extremely high, EPA does not anticipate making the Work Plan available for public review prior to approval. EPA plans to make the Work Plan available for public review after approval, and may require modifications to the approved Work Plan on the basis of information received from the public.
2. Unless exigent circumstances exist at the time, EPA may make any other 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.

E. REPORTING

1. Commencing the first full month after the effective date of this Amended Order, Respondent shall provide EPA, FWS, and WDEQ with monthly progress reports which shall include, at a minimum, the following information:
 - a) activities conducted at the facility in the previous month;
 - b) summaries of problems encountered during the previous month and how the problems were or are being addressed;
 - c) changes in work performed at the facility from that projected in the previous monthly progress report; and
 - d) projected work for the next reporting period.

2. These progress reports are to be submitted by the tenth calendar day of the month following the monthly reporting period.
3. The reporting requirement in VII.E.1. becomes a quarterly (calendar) reporting requirement after EPA's acceptance of the CMSR. The first quarterly report will be due on the tenth day of the first January, April, July, or October after the CMSR is accepted.
4. Respondent shall continue submitting quarterly reports until EPA, after consultation with WDEQ and USFWS determines that reporting can continue on a semi-annual or annual basis. Respondent may request such a determination at any time after two quarterly reports have been submitted.

VIII. CERTIFICATION

- A. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Amended Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Amended Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the facility (a duly authorized representative thus may be either a named individual or any individual occupying a named position); and (c) 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 inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature :

Name :

Title :

IX. ACCESS

Respondent shall permit full access to EPA, FWS, WDEQ, and Sublette County, and their authorized representatives or agents, as may be necessary for the purposes of oversight of and implementation of this Amended Order.

X. GENERAL PROVISIONS

- A. All plans and documents submitted under any section of this Amended Order shall, upon approval by EPA, be incorporated by reference into this Amended Order as if set forth fully herein.
- B. 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.
- C. Respondent shall employ sound scientific, engineering, and construction practices and principles under this Amended Order.

XI. AVAILABILITY AND RETENTION OF INFORMATION

- A. Respondent shall make available to EPA, and shall retain, during the pendency of this Amended 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 Amended 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 Amended Order.
- B. 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.

XII. CONFIDENTIALITY CLAIMS

Respondent may assert confidentiality claims pursuant to 40 C.F.R. part 2. Information determined to be confidential by 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 the EPA, the public may be given access to such information without further notice to Respondent.

XIII. AVAILABILITY OF ADMINISTRATIVE RECORD

The administrative record supporting this Amended Order 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.

XIV. NOTICES, CONTACTS, AND EPA PROJECT MANAGER

- A. Whenever under the terms of this Amended 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 US mail (certified-mail where specified in this Amended Order) or hand carried to the following individuals at the addresses specified below. The following EPA person is designated as the Project Manager for EPA for this Amended Order.

Mr. Randy Lamdin
EPA Region 8, 8ENF-RC
1595 Wynkoop Street
Denver, Colorado 80202-1129
(303) 312-6350
Lamdin.Randy@epa.gov

As to FWS:
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
Department of Environmental Quality
122 West 25th Street
Herschler Building, 4th floor - West
Cheyenne, Wyoming 82002
(307) 777-7781

- B. If the date for submission of any item or notification required by this Amended 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.

XV. RESERVATION OF RIGHTS

- A. Nothing in this Amended 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.
- B. This Amended Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.

- C. 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 laws and regulations and with any of the requirements of this Amended Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.
- D. Compliance by Respondent with the terms of this Amended 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.

XVI. FAILURE TO COMPLY

Pursuant to section 7003(b) of the Act and 40 C.F.R. part 19, any failure by Respondent to comply with this Amended Order shall subject Respondent to civil penalties of not more than \$7,500.00 for each day of each failure to comply with this Amended Order. *See also*, the Federal Register notice dated December 11, 2008 (73 Fed. Reg. 75340).

XVII. OPPORTUNITY TO CONFER, AND MODIFICATION

- A. Respondent has the continuing opportunity to confer informally with EPA concerning the terms of the Order.
- B. If EPA determines that any element of this Amended Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the Amended Order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondent.
- C. Except as otherwise provided in this Amended Order, no modification to this Amended Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

XVIII. NOTICE OF INTENT TO COMPLY

- A. Respondent has timely provided written notice to EPA's Project Manager at the address set forth above stating Respondent will comply with the terms of this Amended Order.

XIX. NOTICE OF NON-LIABILITY OF EPA

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, receivers, trustees, agents or assigns, in carrying out the activities required by this Amended Order.

XX. SEVERABILITY

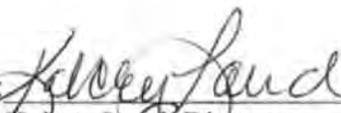
If any provision or authority of this Amended Order or the application of this Amended Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Amended Order shall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

XXI. EFFECTIVE DATES

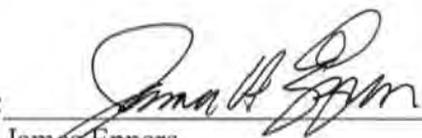
- A. This Amended Order shall become effective immediately upon filing with the Regional Hearing Clerk.
- B. Subsequent modifications made by EPA to this Amended Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified mail or Respondent is hand-delivered a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

United States Environmental Protection Agency Region 8

Date: 5/7/12

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

Date: 5/8/12

By: 
James Eppers
Supervisory Enforcement Attorney
Legal Enforcement Program