

US EPA ARCHIVE DOCUMENT

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: )

Western Environmental, LLC )  
dba Western Environmental Inc. )

and )

Waste Reduction Technologies, LLC, )

RESPONDENTS )

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

UNILATERAL ADMINISTRATIVE  
ORDER

EPA DOCKET NO.  
RCRA 7003-09-2011-0002

## **I. INTRODUCTION**

1. This Unilateral Administrative Order ("UAO") is issued by the United States Environmental Protection Agency, Region IX ("EPA") to Western Environmental, LLC., dba Western Environmental Inc. and Waste Reduction Technologies, LLC ("WEI" and "WRT" respectively, and collectively "Respondents"). This UAO provides for the performance of response actions to address offsite impacts, including any Additional Work that may be required by Section XXIII (Additional Work) of this UAO, by Respondents in connection with the property located at 62-150 Gene Welmas Drive, in Mecca, California (the "Site"). In issuing this UAO, EPA intends for Respondents to identify, investigate, remedy, and/or prevent the potential endangerment to human health or the environment from activities involving solid waste, and to insure that the Work ordered by EPA is designed and implemented to protect human health or the environment. Respondents shall finance and perform the Work in accordance with this UAO, plans, standards, specifications and schedules set forth in this UAO or developed by Respondents and approved by EPA pursuant to this UAO.
2. EPA has determined that Respondents have contributed or are contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste that may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the State of California and the Cabazon Band of Mission Indians of this action on May 9, 2011.

## **II. JURISDICTION**

4. This UAO is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to the Director of the Waste Management Division of EPA Region IX by Delegation 1280.20 (April 6, 1998).

## **III. PARTIES BOUND**

5. This UAO shall apply to and be binding on Respondents and Respondents' officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and on all persons, including but not limited to contractors and consultants, acting on behalf of Respondents, as well as on subsequent purchasers of the Site. Respondents are jointly and severally responsible for carrying out all actions required of them by this UAO. Any change in the ownership or corporate status of any Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter that Respondent's responsibilities under this UAO.

6. Respondents shall provide a copy of this UAO to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondents shall be responsible for and liable for completing all of the activities required pursuant to this UAO, 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 Respondents. Respondents shall provide a copy of this UAO within seven (7) days of the Effective Date, 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 UAO. Respondents shall condition all contracts or agreements with contractors, subcontractors, laboratories or consultants in connection with this UAO, on compliance with the terms of this UAO. Respondents shall ensure that their respective contractors, subcontractors, laboratories, and consultants comply with this UAO.
7. Not later than sixty (60) days prior to any voluntary transfer by any Respondent of any interest in the Site or the operation of the facility, such Respondent shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, such Respondent shall notify EPA within 24 hours of the decision to transfer property. Each Respondent shall notify EPA of any involuntary transfers immediately on such Respondents' initial receipt of notice of any involuntary transfer. Not later than three (3) days after any transfer, such Respondent shall submit copies of the transfer documents to EPA.

#### IV. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this UAO that are defined in RCRA shall have the meaning assigned to them in that statute. Whenever the terms listed below are used in this UAO 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.*

"Day" shall mean a calendar day unless expressly stated otherwise.

"Effective Date" shall be the effective date of this UAO pursuant to Section XXVI.

"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 facility located at 62-150 Gene Welmas Drive, in Mecca, California (92254).

“Work” shall mean all the activities and requirements specified in Section VIII (Work To Be Performed) of this UAO.

## V. FINDINGS OF FACT

9. WEI is registered as a limited liability company with the State of Utah, with its principal place of business at 62-150 Welmas Drive, Mecca, CA 92254.
10. WEI leases the Site pursuant to a lease approved by the United States Bureau of Indian Affairs, acting on behalf of the Cabazon Band of Mission Indians. The Site is located on Cabazon Indian Reservation lands.
11. WEI operates a waste handling facility pursuant to a “Permit to Operate a Solid Waste Handling and Remediation Facility” (“Permit”) issued by the Cabazon Band of Mission Indians Environment Department. The Facility is permitted to carry out remediation of solid, semi-solid and liquid wastes not subject to regulation as hazardous waste under RCRA. The Permit contains numerous limitations, including a requirement that “[n]o emission, process or material shall cause injury, detriment, nuisance, annoyance or endanger the comfort, repose, health or safety of any persons (employees or persons in the Mecca Community) or have a natural tendency to cause injury or damage to business or property.”
12. WEI receives contaminated soils that frequently contain, among other contaminants, measurable levels of volatile organic compounds (“VOCs”) and semi-VOCs. WEI has received more than 165,000 tons of such disposed, contaminated soil since January 2009, and mounds of untreated contaminated soils at the Site are at least forty feet high.
13. According to its web page, WRT “owns and operates” WEI. <http://www.wrt-indio.com/aboutus.html>. WRT operates the WRT Mecca Recycling Center on the same property as the WEI Facility, and separately manages at the Site a co-composting operation. The composting operation includes a variety of source materials, including building materials, green/agricultural wastes, and biosolids from sewage treatment facilities. The composting operation also has included soy whey products, although WRT is reportedly not currently accepting soy whey products.
14. On December 15, 2010, the South Coast Air Quality Management District (“SCAQMD”) received a complaint from the Riverside County Environmental Health Hazardous Materials Branch and from the California Fire Hazardous Materials Team. The complaint reported that odors from an unknown source caused students and staff at the Saul Martinez Elementary School to shelter indoors and some to become ill. SCAQMD investigated the complaint and initially traced the source of the odors to the Site,

approximately 1.5 miles from the Saul Martinez Elementary School.

15. Since the December 15, 2010 complaint, SCAQMD conducted investigations into the source of the odors in the vicinity of the Site, including responses to subsequent incidents of significant odor complaints. Between December 15, 2010, and April 15, 2011, SCAQMD received approximately 202 complaints of odors in the vicinity of the Site, and on 25 separate days SCAQMD staff confirmed operations at the Site to be the cause of the odors. This confirmation includes "fingerprint" sampling using comparisons of the identified constituents of emissions at the point of a complaint to the emissions directly from the Site.
16. SCAQMD has conducted several monitoring activities to confirm that the Site is the source of the odors causing the complaints and health impacts, including collection of "fingerprint" samples of air emissions at the Site for comparison to air emissions at the location of complaints. In particular, SCAQMD identified various sulfur compounds from the soy whey pond operated by WRT, and elevated levels of non-methane organic compounds ("NMOCs"), including VOCs such as acetone, propane and hexene. EPA also obtained samples from the Site on November 9, 2010, and on February 9, 2011, which further help identify the constituents of materials at the Site.
17. SCAQMD sampling confirmed elevated levels of certain NMOCs consistent with emissions from the Site at the Saul Martinez Elementary School approximately 1.5 miles southeast from the Site, the Mecca College of the Desert approximately one-half mile north of the Site, and Mecca Elementary School approximately one mile southeast of the Site.
18. On at least three occasions, paramedics have been called to Saul Martinez Elementary School to treat students and staff made ill after exposure to the fumes. On days the smell is reported as particularly strong, students stay indoors.
19. On March 31, 2011, SCAQMD released a Status Report on Investigations and Air Sampling in Mecca, CA ("Status Report"). According to the Report, SCAQMD "has identified WEI. and its co-owned adjacent facility, WRT, as the primary source of the odors."
20. The SCAQMD initially determined the specific sources of the foul odors to be two specific activities – an oil/water separation pond located at WEI, and a soy-whey/biosolids open air mixing operation at WRT. WEI has since eliminated the oil/water separation pond and WRT suspended accepting additional soy-whey products. As stated in the Status Report, other contributing odor sources identified by SCAQMD include "an elevated, in ground pond where drilling muds are processed, and an open storage/treatment area consisting of 55 gallon drums of waste materials received from cosmetics and pharmaceutical manufacturers."

21. The Status Report further stated “[t]o date, there have been no elevated levels of toxic pollutants detected in the community. However, there are still known health impacts resulting from exposure to strong and objectionable odors, and the AQMD takes these health impacts seriously.”
22. The Status Report summarized that “[t]he most objectionable foul odors have been described as a petroleum-type odor, rotten egg odor, burnt motor oil, raw sewage/human waste-type odor, and a woody-type odor.”
23. SCAQMD investigated a subsequent complaint of significant noxious emissions from the Site on April 15, 2011, and obtained additional fingerprinting data to indicate that the Site was the source of the noxious emissions. On April 27, 2011, SCAQMD advised EPA of the fingerprinting data. EPA personnel attended a community meeting with the SCAQMD on April 28, 2011. In addition to hearing continuing community concerns at this meeting, EPA personnel directly observed the continued presence of strong petroleum and organic decaying odors from the Site.
24. The actions required by this UAO, including financial assurances, may be necessary to protect human health or the environment by mitigating the noxious emissions from the Site where such emissions from the handling, storage or treatment of materials at the Site could cause injury, detriment, nuisance, annoyance or endanger the comfort, repose, health or safety of any persons or have a natural tendency to cause injury or damage to the physical environment.

## **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

25. Based on the Findings of Fact set forth above, and an administrative record supporting this UAO, EPA has determined that:
  - a. Respondents are each a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
  - b. Contaminated soils, organic materials and other materials accepted for treatment at the Site are each discarded material, and therefore are each a “solid waste” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
  - c. Imminent and Substantial Endangerment. The past and present handling, storage and treatment of contaminated soils and the co-composted organic wastes may present an imminent and substantial endangerment to human health or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). Emissions from the Site have led to complaints by students and staff at the Saul Martinez Elementary School and others within the community in Mecca, California, and affected individuals have sought

medical treatment following exposure.

d. Respondents, as the operators of the Site, have contributed and are contributing to the handling, storage and treatment of solid wastes from which emissions are causing a potential endangerment.

e. The actions required by this UAO are necessary to protect human health or the environment.

## VII. ORDER

26. Based on the administrative record for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, the following is hereby ordered. Respondents shall comply with all provisions of this UAO, including, but not limited to, any appendices to this UAO and all documents incorporated by reference into this UAO.
27. Respondents shall finance and perform the Work in accordance with this UAO, plans, standards, specifications and schedules set forth in this UAO or developed by Respondents and approved by EPA pursuant to this UAO.

## VIII. WORK TO BE PERFORMED

28. Project Coordinator. On or before the Effective Date of this UAO, Respondents shall designate a Project Coordinator. Respondents shall notify EPA in writing within three (3) days of the Effective Date of this UAO of the name, address, phone number, electronic mail address and qualifications of the Project Coordinator. The EPA Project Coordinator will be:

Barry Cofer  
U.S. Environmental Protection Agency, Region IX  
Waste Management Division (WST-3)  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3303  
[cofer.barry@epa.gov](mailto:cofer.barry@epa.gov)

EPA may also designate an Alternate Project Coordinator. Project Coordinators shall be responsible for overseeing the implementation of this UAO. Respondents may change their Project Coordinator after notification to EPA in writing at least ten (10) days prior to the change.



29. EPA will approve/disapprove of Respondents' 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 Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. All persons under the direction and supervision of Respondents' Project Coordinator must possess all necessary professional licenses required by federal and state law.
30. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this UAO, all reports, correspondence, notices, or other submittals relating to or required under this UAO shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in this Paragraph 28, unless EPA otherwise directs. 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 7003 -09-2011-0002.
31. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work performed under this UAO shall be under the direction and supervision of Respondents' Project Coordinator and shall be in accordance with the terms of this UAO.
32. Respondents' obligations to perform the Work will begin on the Effective Date of this UAO.
33. Response Action. Respondents shall perform, at a minimum, all actions necessary to implement the Work required in this UAO, and the approved Work Plan(s). The required actions to be implemented include, but are not limited to, the following:
  - a. Upon the Effective Date, Respondents shall immediately cease receipt of any untreated contaminated soils at the Facility. Respondents shall not receive into the Site any additional untreated contaminated soils, biosolids, or soy-whey material without further approval from EPA.
  - b. As soon as practicable, but in no event later than fifteen (15) days after the Effective Date, Respondents shall begin application to all stockpiled and treated material with a chemical stabilizing agent or cover capable of reducing fugitive dust emissions.
  - c. As soon as practicable, but in no event later than fifteen (15) days after the Effective Date, Respondents shall cover or use proper sheeting on all stockpiled or untreated material to prevent the release of noxious emissions from the Site.
  - d. Within fifteen (15) days of the Effective Date, Respondents shall ensure that all

composting material at the Site is not aggregated in a volume that would prevent the proper aeration of the material and that will not allow anaerobic decomposition, and certify that this requirement has been met.

e. Within fifteen (15) days of the Effective Date, Respondents shall provide a Work Plan and schedule for the identification, treatment and disposal of the materials within the Site that may cause noxious emissions from the Site. This Work Plan shall describe the methods of material identification, treatment and disposal, including off-Site transportation and shall ensure that the materials have been either treated or disposed of in the most expeditious manner possible.

f. As soon as practicable, but in no event later than fifteen (15) days after the Effective Date, Respondents shall provide documentation that untreated gases are not escaping from any used oil and oily water storage tanks and containers. Appropriate documentation shall include information to confirm that all pressure valves for the used oil and oily water storage tanks and containers are properly installed and set. Further documentation may include documentation that the tanks and containers are kept securely closed or that properly engineered charcoal filter devices are installed and operational on all vents.

g. As soon as practicable, but in no event later than fifteen (15) days after the Effective Date, Respondents shall provide a Work Plan and schedule for vapor monitoring of the used oil and oily water tanks and containers.

34. The Work undertaken pursuant to this UAO shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this UAO, and is subject to EPA approval. Respondents shall not commence implementation of any Work Plan except in conformance with the terms of this UAO. Respondents shall not commence implementation of any Work Plan developed hereunder until receiving written EPA approval pursuant to this UAO. Following EPA's approval or modification of the Work Plan, Respondents shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.

35. Health and Safety Plan. Respondents shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this UAO. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations to the extent they apply and OSHA has regulatory authority regarding the sufficiency of the Health and Safety Plan and its implementation.

## IX. EPA APPROVAL OF DELIVERABLES

36. Deliverables required by this UAO shall be submitted to EPA for approval or modification. All deliverables must be received at EPA by the due date specified in this UAO or by schedules developed pursuant to this UAO. Deliverables shall be provided to the EPA Project Coordinator at:

Barry Cofer  
U.S. Environmental Protection Agency, Region IX  
Waste Management Division (WST-3)  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3303  
[cofer.barry@epa.gov](mailto:cofer.barry@epa.gov)

Additionally, Respondents shall send a copy of all deliverables to:

Becky Ross, Compliance Manager  
Cabazon Band of Mission Indians  
84-245 Indio Springs Pkwy  
Indio, CA 92203  
[bross@cabazonindians-nsn.gov](mailto:bross@cabazonindians-nsn.gov)

37. After review of any deliverable that is required pursuant to this UAO, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission on specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within five (5) days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
38. In the event of approval, approval on conditions, or modification by EPA, pursuant to this Section, Respondents shall proceed to take any action required by the deliverable, as approved or modified by EPA.
39. Resubmission of Deliverable. On receipt of a notice of disapproval, in whole or in part, pursuant to this Section, Respondents shall, within five (5) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval.

40. Notwithstanding the receipt of a notice of disapproval pursuant to this Section, Respondents shall proceed, at the direction of 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 Respondents of any liability for penalties for non-compliance regarding the deficient portion of the deliverable.
41. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any action as required in a deliverable that has been modified or developed by EPA.
42. If on resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such deliverable timely and adequately.
43. All deliverables required to be submitted to EPA under this UAO shall, on approval or modification by EPA, be incorporated into and be enforceable under this UAO. In the event that EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this UAO, the approved or modified portion shall be enforceable under this UAO.

## **X. MODIFICATION OF THE WORK**

44. If at any time during the implementation of the Work, Respondents identify a need for a compliance date modification or revision of any Work Plan, Respondents shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this UAO.
45. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondents shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondents shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondents shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondents shall thereafter submit to EPA for approval a plan to mitigate this threat. EPA will approve or modify this plan in accordance with the provisions of Section IX, and Respondents shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondents may act as they deem appropriate, at their own risk, to protect human health or the environment.

## **XI. QUALITY ASSURANCE**

46. As part of the Work Plan(s) required in Section VIII of this UAO, 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 any sampling, monitoring and analytical activities. Respondents 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 UAO by reference.
47. As part of the Work Plan(s), Respondents 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 UAO.
48. Respondents shall ensure that laboratories used by Respondents 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 EPA. If methods other than EPA methods are to be used, Respondents shall specify all such protocols in the respective Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.
49. Respondents shall ensure that all laboratories employed for analyses participate in a quality assurance/quality control ("QA/QC") program equivalent to the program that EPA follows. Respondents shall, on EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondents, whether before, during, or after sample analyses. On EPA's request, Respondents shall have the laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondents shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
50. 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 EPA requires a laboratory change, Respondents shall propose two alternative laboratories within thirty (30) calendar days. Once EPA approves of the laboratory change, Respondents shall ensure that laboratory service shall be made available within fifteen (15) calendar days.

**XII. ADMINISTRATIVE DOCUMENTATION**

- 51. EPA retains the responsibility for the issuance of any decision documents related to the Site.
- 52. EPA will provide Respondents with copies of all decision documents for the Site.
- 53. Submission of Documentation. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of performing the Work on which selection of the response action may be based. EPA will maintain an administrative record file. The administrative record supporting this UAO and the Work to be performed shall be available for public review in EPA's offices at 75 Hawthorne Street, San Francisco, California (94105).

**XIII. DOCUMENT CERTIFICATION**

- 54. Any report or other document submitted by Respondents pursuant to this UAO that makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this UAO shall be certified by a responsible corporate officer for the Respondents. 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.
- 55. The certification required by Paragraph 54 above shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **XIV. SAMPLING, ACCESS AND DATA AVAILABILITY**

56. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondents, or on Respondents' behalf, during implementation of this UAO shall be validated by Respondents and submitted to EPA within thirty (30) days of Respondents' receipt of the data. Respondents shall tabulate data chronologically by media. EPA will make available to Respondents data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.
57. Respondents shall orally notify EPA at least twenty (20) days prior to conducting field sampling. At EPA's request, Respondents shall allow split or duplicate samples to be taken by EPA or EPA's representative.
58. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondents shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials. Respondents shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in their possession or control, including those records and documents in the possession or control of Respondents' contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this UAO. Respondents shall use their best efforts to gain access to areas owned by or in the possession of someone other than Respondents, as necessary to implement this UAO, as described in Paragraph 60. Such access shall be provided to 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 EPA determines to be necessary. EPA, its contractors and oversight officials shall notify Respondents of their presence on the Site by presenting their credentials.
59. 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 UAO shall be construed as a violation of the terms of this UAO subject to the penalty provisions outlined in Section XVII (Penalties) of this UAO.
60. Access Agreements. Where action under this UAO is to be performed in areas owned by, or in possession of, someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within forty-five (45) 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 EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondents are not EPA's representative with respect to any liabilities associated with activities to be performed. Respondents shall provide EPA's Project Coordinator with copies of any access agreements. Respondents shall immediately notify EPA if after using Respondents' best

efforts they are 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 Respondents to the present owner of such property requesting access agreements to permit Respondents, EPA, and EPA's authorized representatives to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondents shall, within ten (10) days of their receipt of a denial of access, submit in writing, a description of their efforts to obtain access. EPA may, at its discretion, assist Respondents in obtaining access. In the event EPA obtains access, Respondents shall undertake the Work on such property and Respondents shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

61. Confidential Business Information. Respondents may assert a claim of business confidentiality covering part or all of any information submitted to EPA pursuant to the terms of this UAO under 40 C.F.R. § 2.203 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. § 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public or state or tribal officials by EPA without further notice to Respondents.
62. Privileged Documents. Respondents 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 Respondents assert such a privilege in lieu of providing documents, Respondents shall provide 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 Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this UAO shall be withheld from EPA on the grounds that they are privileged.
63. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Site shall be made available to EPA on request unless Respondents assert a claim that such documents are legally privileged from disclosure. Respondents shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
64. 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.



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

#### **XV. COMPLIANCE WITH OTHER LAWS**

66. Respondents shall perform all actions required pursuant to this UAO in accordance with all applicable local, state, and federal laws and regulations. Respondents shall obtain or cause their 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 UAO.

#### **XVI. RECORD RETENTION**

67. Respondents shall preserve all documents and information, including raw data, relating to the Work performed under this UAO, or relating to any solid waste or hazardous waste found at the Site, for five (5) years following completion of the Work required by this UAO.
68. Respondents shall acquire and retain copies of all documents that relate to the Site that are in the possession of their employees, agents, accountants, contractors or attorneys.
69. Respondents shall make available to EPA all employees and persons, including contractors, who engage in activities under this UAO, and ensure their cooperation with EPA with respect to this UAO.
70. After the five (5) year retention period and ninety (90) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and on request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this UAO, and shall be addressed to EPA's Waste Management Division Director. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the 5 year retention period at the written request of EPA.
71. All documents pertaining to this UAO shall be stored by Respondents in a centralized location at the Site, or an alternative approved by Respondents to promote easy access by EPA or its representatives.

#### **XVII. PENALTIES**

72. Civil Penalties. Violation of this UAO may subject Respondents to civil penalties of at least seven thousand five hundred dollars (\$ 7,500.00) per violation per day. The

assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. Should Respondents violate this UAO or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and may seek judicial enforcement of this UAO.

### **XVIII. RESERVATION OF RIGHTS**

73. Notwithstanding any other provisions of this UAO, 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.
74. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this UAO, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.
75. This UAO 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 EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
76. This UAO is not intended to be nor shall it be construed to be a permit. Compliance by Respondents with the terms of this UAO shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, tribal or federal laws and regulations.
77. Notwithstanding any other provision of this UAO, no action or decision by EPA pursuant to this UAO, including without limitation, any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this UAO, including an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this UAO.

### **XIX. OTHER CLAIMS**

78. By issuance of this UAO, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA will not be deemed a party to any contract, agreement or other

arrangement entered into by Respondents or their officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this UAO.

## XX. INSURANCE

79. Prior to commencing the on-site Work under this UAO, Respondents shall secure, and shall maintain in force for the duration of this UAO and for two (2) years after the completion of all activities required by this UAO, comprehensive general liability insurance and automobile insurance with limits of two million dollars (\$2,000,000), combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this UAO, and annually thereafter on the anniversary of the Effective Date of this UAO, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that their 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 Respondents need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.
80. For the duration of this UAO, Respondents shall satisfy, or shall ensure that their 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 Respondents, in furtherance of this UAO.
81. Prior to commencing the Work under this UAO, Respondents shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

## XXI. COST ESTIMATES AND FINANCIAL ASSURANCE

82. Cost Estimates. Within thirty (30) days after the Effective Date of this UAO Respondents shall submit to EPA a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work described in Section VIII (Work to be Performed). A third party is a party who: (i) is neither a parent nor a subsidiary of Respondents and (ii) does not share a common parent or subsidiary with Respondents. The initial cost estimate must account for the total costs of the work activities described in Section VIII (Work to be Performed) for the entire period of this UAO, including any necessary long term costs, such as operation and maintenance costs, monitoring costs, and institutional controls. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site.

83. Concurrent with the submission of any Work Plan(s) for additional work required under Section XXIII (Additional Work), Respondents shall submit revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform the Work.
84. Respondents must annually adjust the cost estimate(s) for inflation within thirty (30) days after the close of Respondents' fiscal year until the Work required by this UAO is completed. In addition, Respondents must adjust the cost estimate if EPA determines that any additional work is required, pursuant to Section XXIII (Additional Work), or if any other conditions increase the cost of the Work to be performed under this Consent Order.
85. Respondents shall submit each cost estimate to EPA for review, pursuant to Section IX (EPA Approval of Deliverables).
86. Assurances of Financial Responsibility for Completing the Work. In order to secure the completion of the Work in accordance with this UAO, Respondents shall establish financial assurance in the form of a trust fund administered by a trustee who has the authority to act as a trustee under federal or state law and whose trust operations are regulated and examined by a U.S. federal or state agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund only for the costs of performing the Work required under this UAO, and only after EPA has advised the trustee that the Work has been performed in accordance with the requirements of the approved Work Plans. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this UAO has been successfully completed.
87. Respondents shall submit a draft trust agreement to EPA for review pursuant to Section IX (EPA Approval of Deliverables) within thirty (30) days after the Effective Date of this UAO, concurrently with Respondents' submission of the initial cost estimate required by this Section. The trust agreement shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion.
88. Within thirty (30) days after EPA's approval of both the initial cost estimate and the draft trust agreement, whichever date is later, Respondents shall establish a trust fund in an amount at least equal to the initial cost estimate approved by EPA.
89. Respondents shall submit a copy of the trust agreement to:

Andrew Helmlinger  
Office of Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
San Francisco, California 94105  
(415) 972-3904

90. Whenever the annually adjusted estimate for the cost of completing the remaining Work exceeds the amount of financial assurance already provided pursuant to this Section, Respondents shall, within thirty (30) days thereafter, increase the amount of the trust fund to cover such cost increase. In addition, in the event that EPA determines at any time that the financial assurances provided pursuant to this UAO are inadequate (including, without limitation, the trust agreement or the trustee), Respondents shall, within thirty (30) days after receipt of notice of EPA's determination, correct the inadequacy. Furthermore, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days after receipt of such notification, Respondents shall increase the amount of the trust fund to cover such cost increase.
91. Respondents' inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this UAO, including, without limitation, Respondents' obligation to complete the Work in strict accordance with the terms of this UAO.
92. Reduction of Amount of Financial Assurance. If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this UAO, Respondents may, on any anniversary date of the Effective Date of this UAO, or at any other time agreed by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The decision whether to approve a proposal to reduce the amount of financial assurance shall be within EPA's sole discretion and EPA shall notify Respondents of its decision regarding such a proposal in writing. Respondents may reduce the amount of the financial assurance only after receiving EPA's written decision and only in accordance with and to the extent permitted by such written decision.
93. Release of Financial Assurance. Respondents may submit a written request to the Director, Waste Management Division, EPA Region IX, that EPA release Respondents from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXIV (Termination and Satisfaction) that Respondents have demonstrated that all the terms of this UAO have been addressed to the satisfaction of EPA. The Director shall notify both Respondents and the Trustee in writing that Respondents are released from all financial assurance obligations under this UAO.

## **XXII. INDEMNIFICATION**

94. Respondents shall 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 Respondents, Respondents' directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this UAO; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays.

## **XXIII. ADDITIONAL WORK**

95. EPA may determine or Respondents may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in this UAO. EPA may determine that Respondents shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five (5) days after the receipt of such determination, Respondents shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondents shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within ten (10) days of Respondents' receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. On approval of a Work Plan for any additional work, Respondents 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 UAO.

## **XXIV. TERMINATION AND SATISFACTION**

96. The provisions of this UAO shall be deemed terminated and satisfied by Respondents on written notice from EPA that Respondents have demonstrated that all of the terms of this UAO, including any additional work as may be performed pursuant to Section XXIII (Additional Work), have been addressed to the satisfaction of EPA. Termination of this UAO shall not terminate Respondents' obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XVIII (Reservation of Rights); and XXII (Indemnification) of this UAO,

## **XXV. SEVERABILITY**

97. If a court issues an order that invalidates any provision of this UAO or finds that Respondents have sufficient cause not to comply with one or more provisions of this

UAO, Respondents shall remain bound to comply with all provisions of this UAO not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### **XXVI. EFFECTIVE DATE**

98. This UAO is deemed effective, within two (2) days of receipt (the "Effective Date"), unless a conference is requested as provided in Section XXVII (Opportunity to Confer), and Respondents mutually agree to modify the Effective Date.

#### **XXVII. OPPORTUNITY TO CONFER**

99. Respondents may, within two (2) days of receipt of this UAO, request a conference with a Section Chief of the EPA Waste Management Division, or whomever the Section Chief may designate. If requested, the conference shall occur within two (2) days of the request, unless extended by mutual agreement of EPA and the Respondents, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.
100. At any conference held pursuant to Respondents' request, Respondents may appear in person, or be represented by an attorney or other representative. If Respondents desire such a conference, Respondents shall contact Andrew Helmlinger, EPA Attorney Advisor, at (415) 972-3904.
101. The purpose and scope of any such conference held pursuant to this UAO shall be limited to issues involving the implementation of the Response Action required by this UAO and the extent to which Respondents intend to comply with this UAO. If such a conference is held, Respondents may present any evidence, arguments or comments regarding this UAO, its applicability, any factual determinations on which the UAO is based, the appropriateness of any action that the Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this UAO. It does not give Respondents a right to seek review of this UAO, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this UAO. Any such writing should be directed to Andrew Helmlinger, at the following address:


Environmental Protection Agency  
75 Hawthorne Street, ORC-3  
San Francisco, CA 94105  
(415) 972-3904

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

**XXVIII. NOTICE OF INTENT TO COMPLY**

103. Respondents shall, within two (2) working days of the Effective Date of this Order, provide written notice to EPA of Respondents' irrevocable intent to comply with this UAO. Failure to respond, or failure to agree to comply with this UAO, shall be deemed a refusal to comply with this Order.

It is ORDERED this 9 day of May, 2011.

By:   
Jeff Scott, Director  
Waste Management Division  
EPA Region IX