

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE)
ADMINISTRATIVE ORDER ON CONSENT)
ISSUED TO U.S. DEPARTMENT OF ENERGY)
CONCERNING)
INDUSTRIAL LANDFILL NO. 2 (IND-2)) Docket No. 5710-16

ADMINISTRATIVE ORDER ON CONSENT

The Wyoming Department of Environmental Quality (WDEQ) issues this Administrative Order on Consent (AOC) with the consent of the United States Department of Energy (USDOE) to bring Industrial Landfill No. 2 (IND-2) into compliance with the Wyoming Environmental Quality Act.

Prior to January 30, 2015, USDOE owned and operated IND-2 at the former Naval Petroleum Reserve No. 3 near Casper in Natrona County, Wyoming. On January 30, 2015, USDOE entered into a Purchase and Sales Agreement which transferred ownership of the former Naval Petroleum Reserve No. 3 to Natrona County Holdings, LLC (NCH), a subsidiary of Stranded Oil Resources Corporation. NCH owns the land where the IND-2 facility is located, but USDOE remains responsible for the permitting, operation, and closure of the IND-2 facility under the terms of the transfer.

Section 5.1(c) of the Purchase and Sales Agreement states that the Seller (USDOE) will retain all responsibility for any future-approved closure permit(s) pertaining to IND-2, including conducting any assessment monitoring, corrective action, and closure activities required thereunder. Section 5.1(c) also states that the provisions of Section 5.1(c) shall survive closing on the transfer of ownership of Naval Petroleum Reserve No. 3 to NCH. Additionally, Exhibit G-3 to the Purchase and Sales Agreement contains a Grant of IND-2 Landfill Access Easement (Easement) whereby NCH granted to USDOE a non-exclusive access easement to IND-2 to enable USDOE to perform compliance actions necessary to ensure satisfaction of the lawful regulatory requirements of the WDEQ. Copies of Section 5.1(c) of the Purchase and Sales Agreement and the Easement are appended to this Administrative Order on Consent. Also, the Easement was recorded with the Natrona County Clerk on February 2, 2015 at 10:58 a.m.

The permit for USDOE's IND-2 facility expired on January 28, 2002. (WDEQ File No. 20.416). In the summer of 2014, an exceedance of the benzene groundwater standard was detected at a single IND-2 monitoring well (MW-1). WDEQ Solid & Hazardous Waste Division issues this AOC pursuant to Wyoming Statute § 35-11-701 to formalize USDOE's commitment to taking all practicable steps to ensure that groundwater standards at the IND-2 site are met and USDOE's agreement to submit a Closure Plan, Environmental Monitoring Plan, and Closure Report to WDEQ.

WHEREFORE IT IS HEREBY ORDERED THAT:

- I. USDOE shall submit a Closure Plan to WDEQ no later than 90 days after the effective date of the AOC.
 - A. The Closure Plan shall include the following items:
 - i. An estimated schedule for the commencement and termination of closure activities at the IND-2 Landfill once the Closure Plan has been approved;
 - ii. An excavation and removal plan with procedures that will be used to transport excavated material from the IND-2 Landfill to a permitted facility;
 - iii. Specifications for land reclamation and reseeding at the IND-2 Landfill;
 - iv. Specifications for confirmation sampling to demonstrate that the material contained in the IND-2 Landfill has been removed;
 - v. A description of post-closure land use;
 - vi. A post-closure care and inspection plan;
 - vii. If not already completed, a plan to survey and mark all facility boundary corners with permanent survey caps;
 - viii. A copy of the Grant of IND-2 Landfill Access Easement;
 - ix. A map or maps illustrating at a minimum: facility boundaries, final contours, monitoring well locations, points of access, access controls and fencing, reclamation areas, and any required surface water management structures;
 - x. A United States Geological Survey topographic map with a scale of 1:24,000 with the facility location shown; and
 - xi. Recordkeeping procedures pertaining to information documenting that closure activities were conducted according to a plan approved by the Administrator, monitoring data and monitoring reports, post-closure care and inspection records, and groundwater monitoring well logs.
 - B. If WDEQ determines that the Closure Plan is incomplete or technically inadequate, WDEQ shall notify USDOE of the deficiencies in writing within sixty (60) calendar days of receiving the Closure Plan. USDOE shall have sixty (60) calendar days from the date of receipt of the letter to submit proposed revisions necessary to address any identified deficiencies, or to submit a response explaining why revisions are not necessary. WDEQ shall respond in writing to USDOE's submittal within sixty (60) calendar days.
 - C. If WDEQ determines that the Closure Plan is complete and technically adequate, the Administrator shall approve the Closure Plan and notify USDOE of the approval in writing within sixty (60) calendar days of receipt of the Closure Plan.
 - D. USDOE agrees to complete closure activities as described in the approved Closure Plan and in accordance with the schedule in the approved Closure Plan.
- II. USDOE shall submit an Environmental Monitoring Plan (EMP) for post-closure monitoring of the IND-2 Landfill site to WDEQ no later than 60 days after the effective date of the AOC. USDOE's post-closure monitoring obligations shall be limited to the assessment of benzene levels in the MW-1 well. USDOE shall provide groundwater monitoring reports to WDEQ on an annual basis.

- A. The EMP shall include the following items:
 - i. Sampling frequency;
 - ii. Sampling and analysis procedures;
 - iii. A general description of the statistical procedures that may be used to determine that the benzene groundwater protection standard has been achieved; and
 - iv. Procedures for MW-1 well maintenance and inspection.
 - B. If WDEQ determines that the EMP is incomplete or technically inadequate, WDEQ shall notify USDOE of the deficiencies in writing within sixty (60) calendar days of receiving the EMP. USDOE shall have sixty (60) calendar days from the date of receipt of the EMP to submit proposed revisions necessary to address any identified deficiencies, or to submit a response explaining why revisions are not necessary. WDEQ shall respond in writing to USDOE's submittal within sixty (60) calendar days.
 - C. If the Administrator determines that the EMP is complete and technically adequate, the Administrator shall approve the EMP and notify USDOE of the approval in writing within sixty (60) calendar days of receipt of the EMP.
 - D. USDOE agrees to complete post-closure monitoring activities as described in the approved EMP and in accordance with the schedule in the approved EMP.
- III. USDOE shall submit a Closure Report, certified by a Wyoming licensed professional engineer, to WDEQ upon completion of the tasks described in the Closure Plan, as determined by DOE.
- A. The Closure Report shall demonstrate that the actions listed in the Closure Plan approved by the WDEQ have been completed.
 - B. If WDEQ determines that the Closure Report is incomplete or technically inadequate, WDEQ shall notify USDOE of the deficiencies in writing within sixty (60) calendar days of receiving the Closure Report. USDOE shall have sixty (60) calendar days from the date of receipt of the letter to submit proposed revisions necessary to address any identified deficiencies, or to submit a response explaining why revisions are not necessary. WDEQ shall respond in writing to USDOE's submittal within sixty (60) calendar days after submission.
 - C. If USDOE and WDEQ are unable to reach agreement regarding the completeness or adequacy of the Closure Report after the exchange described in Subsection III(B), Sections XIV, XV, and XVI shall govern their dispute.
 - D. If the Administrator determines that the Closure Report is complete and technically adequate, the Administrator shall approve the Closure Report and notify USDOE of the approval in writing within sixty (60) calendar days of receipt of the Closure Report
 - E. If, after receiving the Closure Report, the Administrator determines that closure activities have been completed according to the approved Closure Plan, WDEQ shall provide written notice to USDOE that closure activities are complete, and the post-closure period shall begin.
- IV. USDOE shall notify WDEQ of any material changes or problems encountered while implementing this AOC, the Closure Plan, or the EMP.

- V. This AOC shall remain in effect throughout the closure and post-closure period until the Administrator determines in writing that the facility has been stabilized in a manner protective of human health and the environment. Subject to subsections V.A. and V.B., *infra*, USDOE may petition WDEQ to terminate this AOC or petition WDEQ for an alternate source determination only after the activities described in the Closure Plan have been completed and WDEQ has approved the Closure Report.
- A. If concentrations of benzene have not exceeded the groundwater protection standard for a period of three (3) consecutive years of post-closure monitoring, USDOE may petition to terminate this AOC, including USDOE's obligations to continue groundwater sampling and remediation at the IND-2 facility. If sampling data collected after three (3) consecutive years of post-closure monitoring indicates that benzene levels continue to exceed groundwater standards, USDOE may petition for an alternate source determination. If WDEQ issues an alternate source determination, this AOC, including USDOE's obligations to continue groundwater sampling and remediation at the IND-2 facility, shall terminate.
- B. If WDEQ grants USDOE's petition to terminate or petition for an alternate source determination, WDEQ shall state in writing that the grant of the petition to terminate the AOC or the petition for an alternate source determination, as applicable, is equivalent to completion of a Closure Permit under Wyoming law; any required assessment monitoring, corrective action, and closure activities have been completed to WDEQ's satisfaction; and USDOE has no further obligation to perform such compliance actions at the IND-2 site.
- VI. USDOE agrees that WDEQ representatives shall be considered "Designated Users" under the Easement and that, upon the presentation of credentials and other documents as may be required by law, they may cross, access, and enter upon the premises where the IND-2 facility is located. USDOE further agrees that WDEQ representatives, upon the presentation of credentials and other documents as may be required by law, may collect copies of any records that must be kept under the conditions of this AOC; inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the Wyoming Environmental Quality Act and this AOC; and collect resource data, sample, or monitor at reasonable times, for the purposes of ensuring compliance or as otherwise authorized by the appropriate rules and regulations of the WDEQ, any substances or parameters.
- VII. WDEQ shall file this AOC with the Wyoming Environmental Quality Council (EQC) following execution by all parties.
- VIII. USDOE consents to the issuance of this AOC. USDOE agrees not to file a request for hearing before the EQC to contest the validity of the AOC's terms under Wyoming Statute § 35-11-701(c). However, USDOE reserves the right to request a hearing before the EQC to contest the later enforcement of terms of this order.
- IX. Neither USDOE nor WDEQ (Parties) shall have any claim against the other for attorneys' fees or other costs incurred throughout the process outlined above, including costs incurred

in the preparation of this AOC and any ensuing appeals or litigation. Each party shall bear its own attorney fees and costs, if any, incurred through the date that both parties sign this AOC. Each party assumes the risk of any liability arising from its own conduct. Parties agree not to insure, defend, or indemnify each other.

- X. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this AOC shall not be construed to create such status. The rights, duties, and obligations contained in this AOC shall operate only between the Parties to this AOC and shall inure solely to the benefit of the Parties to this AOC. The Parties to this AOC intend and expressly agree that only Parties signatory to this AOC shall have any legal or equitable right to seek to enforce this AOC, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this AOC, or to bring an action for the breach of this AOC.
- XI. The State of Wyoming and WDEQ do not waive sovereign immunity by entering into this AOC and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute § 1-39-104(a) and all other state law. By entering into this AOC, USDOE does not waive any claim of sovereign immunity that it may have under Federal or State law not expressly waived by statute, nor does it waive any immunity from payment of fines or penalties. USDOE reserves any and all rights and defenses to any enforcement action taken by the State of Wyoming, WDEQ, or any citizen, and nothing in this AOC will constitute a waiver of such rights or defenses.
- XII. Any Party may request changes to this AOC. Any changes, modifications, revisions, or amendments to this AOC that are mutually agreed upon by the Parties shall be incorporated by written instrument, executed, and signed by all Parties to this AOC. WDEQ will then submit the changes, modifications, revisions, or amendments to the EQC for approval.
- XIII. The effective date of this AOC is the date the final signature is attached.
- XIV. The Parties agree that any suit brought in connection with this AOC shall be brought in the court with jurisdiction and in an appropriate venue.
- XV. Should any portion of this AOC be judicially determined to be illegal or unenforceable, the remainder of the AOC shall continue in full force and effect, and the Parties may renegotiate the terms affected by the severance.
- XVI. The Parties expressly agree that all disputes arising under this AOC may be resolved by non-binding mediation, or by binding arbitration, or by litigation, or by some combination of the foregoing three methods. The following conditions and requirement apply to the resolution of disputes.
 - A. The Parties expressly stipulate and agree that the Parties must mutually consent to the use of non-binding mediation or binding arbitration on a case by case basis as a method of resolving a particular dispute, and nothing in this AOC to the contrary shall require either Party to use non-binding mediation or binding arbitration as a method of resolving a Dispute if any Party refuses to do so.

- B. If the Parties mutually agree to use non-binding mediation as a method of resolving a particular dispute, they must also mutually agree in advance to the terms and conditions under which the non-binding mediation will take place.
 - C. If the Parties mutually agree to use binding arbitration as a method of resolving a particular dispute, they expressly stipulate and agree that the prior approval of the General Counsel of USDOE must be obtained. Further, if the Parties mutually agree to use binding arbitration as a method of resolving a particular dispute, the Parties expressly stipulate and agree that such method shall be used in accordance with all applicable federal statutes, laws, rules and regulations including, but not limited to, the Administrative Dispute Resolution Act of 1996, Public Law 104-320. As required by 5 U.S.C. § 575(c), USDOE will engage in prior consultation with the U.S. Attorney General and the issuance of appropriate guidance pursuant to such statute, before the Parties may engage in binding arbitration to resolve a particular dispute. The Parties expressly stipulate and agree that binding arbitration must be used in accordance with the terms and conditions of 5 U.S.C. § 575, as well as any guidance or direction issued thereunder.
 - D. The Parties expressly stipulate and agree that non-binding mediation or binding arbitration may be used alone, each by itself, or in some combination regardless of the sequence in which each one is used, or not at all.
 - E. The Parties may, in each Party's sole discretion, forego the use of non-binding mediation, or binding arbitration, or both as a method or methods of resolving a particular dispute and instead choose to engage in litigation as a means of resolving such dispute. The Parties need not obtain the approval or consent of the other Party before choosing to use, file, pursue, or engage in such litigation. Any Party that chooses to use litigation as a means of resolving a particular dispute must file, prosecute, or litigate its case or claim in a court of competent jurisdiction.
- XVII. No Party shall be deemed to have waived or discharged any claim arising out of this AOC, or any power, right, privilege, remedy, or condition under this AOC, unless the waiver or discharge is expressly set forth in a written instrument duly executed and delivered by or on behalf of the Party against whom the waiver or discharge is sought to be enforced. A waiver or discharge made on one occasion or a partial waiver or discharge shall not preclude any other or further exercise or enforcement of such power, right, privilege, or remedy or requirement to satisfy such condition. No failure or delay on the part of any Party to exercise or enforce any power, right, privilege, or remedy under this AOC or to require the satisfaction of any condition under this AOC and no course of dealing between the Parties shall operate as a waiver, discharge, or estoppel of any such power, right, privilege, remedy, or condition.
- XVIII. This AOC and the documents to be executed hereunder constitute the entire agreement and understanding among the Parties with respect to the closure of the IND-2 Landfill, and supersede all prior agreements, discussions, and understandings, whether oral or written, of the Parties relating to the closure of the IND-2 Landfill.
- XIX. Each Party represents that they are authorized to enter into this AOC, agree to comply with and to be bound by the terms of this AOC, and further agree that they will not contest the

basis or validity of this AOC. This AOC shall become binding upon the Parties once executed by all Parties and shall be binding upon Parties' successors or assigns.

XX. The signatories certify that they are duly authorized to bind their respective Parties to this AOC. This AOC shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Dated this 14~~th~~ day of NOVEMBER, 2016.



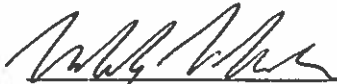
Todd Parfitt
Director
Wyoming Department of Environmental Quality



Luke Esch
Administrator
Solid & Hazardous Waste Division

WE HEREBY CONSENT to the provisions of this Administrative Order on Consent:

FOR THE UNITED STATES DEPARTMENT OF ENERGY:



Neelesh Nerurkar
Deputy Assistant Secretary
Office of Oil and Natural Gas

10/28/16
Date