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| In the Matter of: | : | STIPULATION AND CONSENT ORDER |
| | : | |
| Clean Harbors Grassy Mountain, LLC | : | No. 2007057 |
| Notice of Violation | : | |
| No. 2001002 | : | |
| UTD991301748 | : | |

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This **STIPULATION AND CONSENT ORDER** (CONSENT ORDER) is issued by the **DIRECTOR OF THE UTAH DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL** pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.*

JURISDICTION

1. The Director has jurisdiction over the subject matter of this CONSENT ORDER pursuant to Utah Code §§ 19-6-107 and 19-6-112 and jurisdiction over the Grassy Mountain Facility owned and operated by Clean Harbors Grassy Mountain, LLC (CHGM). CHGM consents to and will not challenge issuance of this CONSENT ORDER or the Director’s jurisdiction to enter and enforce this ORDER. Grassy Mountain and the Director are parties to this agreement.

FINDINGS

2. CHGM is a Delaware Limited Liability Company registered to do business in the State of Utah. CHGM is the owner and operator of the Grassy Mountain Facility.
3. The Grassy Mountain facility is a hazardous waste treatment, storage, and disposal facility located in Tooele County, Utah. CHGM operates the Grassy Mountain Facility under the provisions of a hazardous waste Part B Permit, (“Permit”) originally issued on June 30, 1988. The Director renewed and reissued the Permit on September 28, 2012.
4. CHGM is a “person” as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules), the Act, and the Permit.
5. Between September 16 and 25, 2019, authorized representatives of the Director (inspectors) conducted a hazardous waste inspection at the Grassy Mountain Facility.
6. Pursuant to the Environmental Self-Evaluation Act, Utah Code, § 19-7-101, *et seq.*, on May 3, 2019, CHGM self-reported that “CHGM accepted and disposed of hazardous waste that failed to meet the land disposal restrictions. *See* Letter from Shane B. Whitney to Ty Howard (Notification) (DSHW-2019-004806) (May 3, 2019). CHGM identified six profiles that failed to meet the land disposal restriction concentration limits – profiles CH1718328, CH1750747, CH1752015, CH1764521, CH1764523, CH1782136. *Id.*
7. Based on findings documented during the inspection and the May 3, 2019, self-reported non-compliance, the Director issued Notice of Violation No. 2001002 (NOV) which alleged violations of

the Permit and the Rules, including violation 3 related to disposal of hazardous waste that failed to meet land disposal restrictions.

8. On June 9, 2020, CHGM filed a written response to the NOV. *See* Letter from Shane Whitney to Ty Howard (Response to NOV) (DSHW-2020-008432) (June 9, 2020).
9. In its May 3, 2019, Notification and its June 9, 2020, Response to NOV, CHGM requested the Department of Environmental Quality (DEQ) waive any penalties associated with violation no. 3 in accordance with Utah Code § 19-7-109. Specifically, CHGM proffers its basis that it met the criteria in Utah Code § 19-7-109(3), including that the profiles that failed to meet the land disposal restriction standards “was an isolated error . . . and did not result from a lack of due diligence.” *See* DSHW-2019-004806; DSHW-2020-008432.
10. After issuance of the NOV, the Director later determined that profile CH1718328 one of six profiles that CHGM notified failed to meet the land disposal restriction universal treatment standard did meet the alternative land disposal treatment standard for contaminated soils. *See* Letter from Ty L. Howard to Michelle L. Cottle (DSHW-2020-009442) (June 30, 2020). However, waste disposed at the Grassy Mountain Facility based on five profiles (CH1750747, CH1752015, CH1764521, CH1764523, CH1782136) failed to meet alternative land disposal restrictions for contaminated soil.
11. To resolve NOV No. 2001002, on August 11, 2020, the Director proposed a draft stipulation and consent (SCO) order no. 2007057 and penalty to CHGM.
12. On September 10, 2020, CHGM submitted a written response to the Director’s proposed draft SCO. *See* Letter from Timmerly Fitzpatrick to Ty L. Howard (September 10, 2020).
13. In accordance with Utah Code § 19-7-109, the Director reviewed CHGM’s request for DEQ to waive any penalties associated with violation no. 3. The Director did not find that CHGM’s self-reported noncompliance met the provisions specified in Utah Code § 19-7-109(2) as CHGM violation reoccurred when it disposed of waste that failed to meet land disposal restriction standards based on five separate profiles.
14. In accordance with the Civil Penalty Policy, Utah Admin. Code R315-102, which considers such factors as the gravity of the violations, the extent of deviation from the Rules, the potential for harm to human health and the environment, good faith efforts to comply, and other factors, the Director calculated and proposed a penalty based on the violations alleged in the NOV No. 2001002.
15. In accordance with Utah Code § 19-7-109(5) and the Civil Penalty Policy, the Director acknowledged CHGM’s self-report of non-compliance and its good faith efforts to timely address the non-compliance and thereby, reduced the penalties associated with violation 3.

STIPULATION AND CONSENT ORDER

16. This CONSENT ORDER has been negotiated in good faith and the parties now wish to fully resolve Notice of Violation No. 2001002 without further administrative or judicial proceedings.
17. In full settlement of the violations alleged in NOV No. 2001002, CHGM shall pay a penalty of \$20,575.00 (twenty thousand five hundred seventy dollars). Payment shall be made within thirty days of the effective date of this CONSENT ORDER. Payment shall be made to the State of Utah, Department of Environmental Quality, c/o Director, Utah Division of Waste Management and Radiation Control, P.O. Box 144880, Salt Lake City, Utah 84114-4880.

EFFECT OF CONSENT ORDER

18. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The obligations in this CONSENT ORDER apply to and are binding upon the Division of Waste Management and Radiation Control and upon CHGM and any of CHGM's successors, assigns, or other entities or persons otherwise bound by law.
19. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of Utah of its right to initiate enforcement action, including civil penalties, against CHGM in the event of future non-compliance with this CONSENT ORDER, with the Act, with the Rules, or with the Permit; nor shall the State of Utah be precluded in any way from taking appropriate action should such a situation arise again at the Grassy Mountain Facility. However, entry into this CONSENT ORDER shall relieve CHGM of all liability for violations which did arise or could have arisen with respect to the allegations contained in NOV No. 2001002.

EFFECTIVE DATE

20. This CONSENT ORDER shall become effective upon the date of execution by the Director.

PUBLIC PARTICIPATION

21. This CONSENT ORDER shall be subject to public notice and comment for a period of at least 30 days (Comment Period) in accordance with Utah Admin. Code R315-124-34. The Director reserves the right to withdraw or withhold its consent if any comment received during the Comment Period disclose facts or consideration indicating the CONSENT ORDER is inappropriate, improper, or inadequate.

SIGNATORY

22. The undersigned representative of CHGM certifies he is authorized to enter into this CONSENT ORDER and to execute and legally bind CHGM.

Pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.*, in the *Matter of Clean Harbors Grassy Mountain LLC Notice of Violation No.2001002*, the parties hereto mutually agree and consent to STIPULATION AND CONSENT ORDER No. 2007057 as evidenced below:

CLEAN HARBORS GRASSY MOUNTAIN
LLC

THE STATE OF UTAH
DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL

Shane B. Whitney, General Manager

Ty L. Howard, Director

Date: _____

Date: _____

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: **1. a., c., g., i., j., k., n., p., and r**

Violation Description: **WAP/QAP**

The following violations were addressed by the facility in their response to the NOV and were not included in the penalty calculations.

- a. Failure to provide a copy of the QAP: The lab staff misunderstood what was being asked; the facility has a QAP and has completed additional training with staff.
- c. Failure to note the percent liquid in a sample: The facility provided documentation that percent liquid was noted on a different form. The process will be improved for the future.
- g. Failure to perform QA/QC on paint filter tests: The facility conducts paint filter tests for compliance with the permit in the waste stabilization area. They provided logs that showed the weights are calibrated regularly and duplicates are analyzed every 10 samples.
- i. Improper weight verification standards: The facility described how the "intercomparison method" is used to meet the requirements of the SOP and attached certification that the weights are acceptable for calibration.
- j. Failure to maintain traceability: The facility supplied additional information to show how they are maintaining traceability in lab books.
- k. Internal/external data validation: The facility provided records that managers were performing the data validation.
- n. Internal/external proficiency testing: The facility provided documentation of internal proficiency testing and sending quarterly external proficiency testing samples to ERA Laboratories.
- p. Corrective Action Reports: The facility attached documentation of their corrective action process and recommended modifying the permit to outline expectations more clearly.
- r. Fingerprint/waste profile: The facility provided documentation that profiles and fingerprint results were compared for the waste in question.

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: **1.b.**

Violation Description: **WAP/QAP – Failure to resolve a waste discrepancy**

1. Gravity Based Penalty: \$2,080
 - (a) Potential for Harm: **MODERATE**

Inaccurately characterized/documented waste could lead to mismanagement of the waste and potentially could impact worker safety since the profile did not match the actual waste.
 - (b) Extent of Deviation: **MINOR**

The facility has a process in place for resolving discrepancies and routinely follows the process. Additional documentation suggests this was an isolated incident. Additional training was conducted.
 - (c) Multiple/Multi-day: N/A
2. Adjustment Factors (if applicable): N/A
 - (a) Good faith: The facility conducted additional training for their staff as soon as they learned of the concerns. The penalty was reduced by 5%.
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors: N/A
3. Economic Benefit:

The facility did not derive significant savings by failing to resolve a waste discrepancy since they are routinely following their waste discrepancy resolution process.
4. Recalculation of Penalty based on New Information:

TOTAL: \$1,976

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1. d.

Violation Description: **Failure to provide the Director with SOP modifications within 7 days**

1. Gravity Based Penalty: \$2,600

(a) Potential for Harm: **MINOR**

The facility has fifteen SOPs it follows to characterize incoming waste. Of these, four had been revised without notifying the Division or modifying the permit. The requirement to modify the permit ensures that the Director is advised of the changes so there are no direct impacts to human health or the environment for failure to modify the permit.

(b) Extent of Deviation: **MODERATE**

Eleven of the SOPs incorporated by reference into the permit were being followed and had not been altered.

(c) Multiple/Multi-day: \$51

Four SOPs were modified without being incorporated into the permit.

2. Adjustment Factors (if applicable): N/A

(a) Good faith: N/A

(b) Willfulness/Negligence: N/A

(c) History of Compliance or Noncompliance: N/A

(d) Ability to pay: N/A

(e) Other Unique Factors: N/A

3. Economic Benefit:

Since one SOP was changed in 2001 and three were changed in 2003, the facility should have conducted at least two Class 1 Modifications.

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| Class 1 Modification: | \$1,000 |
| Staff Review: | \$90/hour x 8 = \$720 |
| Estimated Cost per Modification: | \$ 1,720 |
| Times 2 Modifications: | \$ 3,440 |
| Economic Benefit: | \$3,440 |

4. Recalculation of Penalty based on New Information:

TOTAL: \$ 6,193

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1.e.

Violation Description: **Inappropriate calibration range of n-butanol for the Setaflash Method**

1. Gravity Based Penalty: \$200

(a) Potential for Harm: **MINOR**

Inappropriate calibration for an ignitability test could result in mischaracterization and mismanagement of waste. The facility was not following the approved SOP for ignitability tests with the Setaflash method. However, the facility was using the Pensky-Martens method and using that method's specified calibration range. As such, the potential for mischaracterizing the waste was minor.

(b) Extent of Deviation: **MINOR**

The facility was not following the approved SOP for the Setaflash method that is incorporated in the permit. Ignitability is not routinely performed by Clean Harbors and most samples are sent to Clean Harbors Aragonite.

(c) Multiple/Multi-day: N/A

2. Adjustment Factors (if applicable): N/A

(a) Good faith: N/A

(b) Willfulness/Negligence: N/A

(c) History of Compliance or Noncompliance: N/A

(d) Ability to pay: N/A

(e) Other Unique Factors: N/A

3. Economic Benefit:

The facility would not have derived significant savings or profits by failing to have the appropriate calibration range for Setaflash because they were conducting a similar analysis for ignitability.

4. Recalculation of Penalty based on New Information:

TOTAL: \$ 200

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1.f.

Violation Description: **Inappropriate calibration standard for the Setaflash Method**

1. Gravity Based Penalty: \$200

(a) Potential for Harm: **MINOR**

Inappropriate calibration for an ignitability test could result in mischaracterization and mismanagement of waste. The facility was not following the approved SOP for ignitability tests with the Setaflash method. However, they were using the Pensky-Martens method and using that method's specified calibration standards. As such, the potential for mischaracterizing the waste was minor.

(b) Extent of Deviation: **MINOR**

The facility was not following the approved SOP for the Setaflash method that is incorporated in the permit. Ignitability is not routinely performed by Clean Harbors Grassy and most samples are sent to Clean Harbors Aragonite.

(c) Multiple/Multi-day: N/A

2. Adjustment Factors (if applicable): N/A

(a) Good faith: N/A

(b) Willfulness/Negligence: N/A

(c) History of Compliance or Noncompliance: N/A

(d) Ability to pay: N/A

(e) Other Unique Factors: N/A

3. Economic Benefit:

The facility would not have had derived significant savings or profits by failing to have the appropriate calibration standards for Setaflash because they were conducting a similar analysis for ignitability.

4. Recalculation of Penalty based on New Information: N/A

TOTAL: \$ 200

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1.h.

Violation Description: **Inappropriate pH verification accuracy range**

1. Gravity Based Penalty: \$ 7,800
 - (a) Potential for Harm: **MAJOR**

Inaccurately measuring pH could lead to the mismanagement of waste and worker safety in managing the waste.
 - (b) Extent of Deviation: **MODERATE**

There was a discrepancy regarding the required accuracy range between the QAP and the SOP. The facility has proposed modifying the permit to make the requirements consistent.
 - (c) Multiple/Multi-day: N/A
2. Adjustment Factors (if applicable): N/A
 - (a) Good faith: N/A
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors: N/A
3. Economic Benefit:

The facility would not have derived significant savings or profits by failing to have the appropriate pH verification accuracy range because they were still using calibration standards and measuring pH.
4. Recalculation of Penalty based on New Information: N/A

TOTAL: \$ 7,800

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1.1.

Violation Description: **Failing to perform bi-weekly balance calibrations**

1. Gravity Based Penalty: \$ 155
 - (a) Potential for Harm: **MINOR**

There would be no direct impact to human health or the environment from failing to calibrate the balance.
 - (b) Extent of Deviation: **MINOR**

The facility was not meeting the requirement to log calibrations and could not document that the calibrations were performed as required. The facility indicated they were performing the balance calibrations but were not always logging them appropriately. They have conducted additional training with their staff to ensure that calibrations are reported properly.
 - (c) Multiple/Multi-day: N/A

2. Adjustment Factors (if applicable): N/A
 - (a) Good faith: N/A
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors: N/A

3. Economic Benefit:

There would not have been a significant cost savings by failing to calibrate or document the calibrations.

4. Recalculation of Penalty based on New Information: N/A

TOTAL: \$ 155

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1.m.

Violation Description: **Failing to establish an internal audit system**

1. Gravity Based Penalty: \$ 155
 - (a) Potential for Harm: **MINOR**

The facility provided an example of the internal audit system they have developed; however, internal audits were not always properly documented.
 - (b) Extent of Deviation: **MINOR**

Although the facility provided evidence that an audit system existed and was being utilized, the requirements to document audits were not being met. The facility has hired/named a QC officer who will conduct audits in April and October and will track them using a Compliance Tracking Calendar.
 - (c) Multiple/Multi-day: N/A

2. Adjustment Factors (if applicable): N/A
 - (a) Good faith: N/A
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors: N/A

3. Economic Benefit: Although the cost avoided by not hiring a QAO would be substantial, the duties of a QAO could have been assigned to someone at the facility with knowledge of laboratory operations who was independent of the chemists and management.

4. Recalculation of Penalty based on New Information: N/A

TOTAL: \$ 155

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: **1.o.**

Violation Description: **Failure to conduct &/or document internal audits**

1. Gravity Based Penalty: \$ 155
 - (a) Potential for Harm: **MINOR**

The facility provided evidence that some audits were being performed, but not routinely and properly documented.
 - (b) Extent of Deviation: **MINOR**

Although the facility provided some evidence that audits were being performed, the requirements to document the audits were not being met. The facility re-trained lab personnel regarding internal audits and record keeping on March 11, 2020. The facility has hired/named a QA/QC officer who will track internal and external audits using a Compliance Tracking Calendar. Audits and reporting will be performed in April and October.
 - (c) Multiple/Multi-day: N/A

2. Adjustment Factors (if applicable):
 - (a) Good faith: N/A
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors: N/A

3. Economic Benefit: Significant benefit could not be determined.

4. Recalculation of Penalty based on New Information:

TOTAL: \$ 155

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 1.g.

Violation Description: **Failing to prepare and review QA reports**

1. Gravity Based Penalty: \$ 155
 - (a) Potential for Harm: **MINOR**

The facility performs quality assurance reviews but has not prepared the reports.
 - (b) Extent of Deviation: **MINOR**

Although the facility provided evidence that a QA system is in place and that QA reviews are conducted, the requirement to prepare the reports was not being met.
 - (c) Multiple/Multi-day: N/A

2. Adjustment Factors (if applicable):
 - (a) Good faith: N/A
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors: N/A

3. Economic Benefit:

The facility would not have derived a significant economic benefit from failing to prepare reports.

4. Recalculation of Penalty based on New Information:

TOTAL: \$ 155

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 2.a. and b.

Violation Description: Personnel training

1. Gravity Based Penalty: \$155

(a) Potential for Harm: **MINOR**

Employee Riley Ahlstrom did not complete his CPR refresher training as required but had completed all other trainings. The facility sent him to update his training the week after the inspection.

The QA manager was not included in the list of personnel required to take training on the WAP and QAP. The facility has proposed to modify the permit to include the QA manager on this list.

(b) Extent of Deviation: **MINOR**

Other employees at the facility had completed the required training, and the issue was addressed immediately.

(c) Multiple/Multi-day: \$51

Two violations, one for the employee who did not complete his CPR training and one for not listing the QA manager as one of the personnel required to take training on the WAP and QAP.

2. Adjustment Factors (if applicable):

(a) Good faith: N/A

(b) Willfulness/Negligence: N/A

(c) History of Compliance or Noncompliance: N/A

(d) Ability to pay: N/A

(e) Other Unique Factors: N/A

3. Economic Benefit:

The facility would not have derived significant savings by failing to have one employee trained on time.

4. Recalculation of Penalty based on New Information:

TOTAL: \$ 206

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2001002

Violation number from NOV: 3

Violation Description: **Disposing waste that did not meet LDR standards**

1. Gravity Based Penalty: \$ 11,700
 - (a) Potential for Harm: **MAJOR**

Violations of LDR standards could lead to significant impacts to human health or the environment. Additionally, there is major risk to the hazardous waste regulatory program for inappropriately managing waste in this way.
 - (b) Extent of Deviation: **MAJOR**

Disposing of waste that does not meet the LDR in a landfill cell is substantial non-compliance with the permit.
 - (c) Multiple/Multi-day: \$ 1,560

There were five occurrences of waste exceeding LDR standards being disposed in the landfill. (This number of violations concurs with the enforcement action for the Utah Test and Training Range, the generator of the waste.) The multiple occurrence was reduced from five to four occurrences in accordance with the Penalty Policy.
2. Adjustment Factors (if applicable): The penalty was adjusted downward \$14,560 based on a combination of good faith and other unique factors.
 - (a) Good faith: In accordance with Utah Code 19-7-109(5) and the penalty policy, penalty reduction \$9,811.50.

The facility notified the Division that waste exceeding the LDR standards had been disposed in the landfill as soon as it became aware of the issue. In addition, the facility investigated to determine if other profiles were incorrect. Although requested, the facility did not meet the criteria for full penalty waiver under Utah Code § 19-7-109.
 - (b) Willfulness/Negligence: N/A
 - (c) History of Compliance or Noncompliance: N/A
 - (d) Ability to pay: N/A
 - (e) Other Unique Factors:

Penalty reduction \$4,748.50.

The facility spent \$ 9,497 for a risk assessment to determine whether the waste should be removed or remain in place. (The assessment determined it would be safer for facility workers to leave the waste in place rather than excavate it.) The penalty was adjusted downward for half of the cost of the risk assessment.
3. Economic Benefit: \$ 0

The facility and Clean Harbors did not receive any significant savings or profits by disposing of the waste in the landfill.
4. Recalculation of Penalty based on New Information:

TOTAL: \$ 3,380