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In the Matter of:	:	STIPULATION AND CONSENT ORDER
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Clean Harbors Aragonite, LLC	:	No. 2106050
Notice of Violation No. 2102003	:	
UTD 981 552 177	:	

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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 Aragonite facility owned and operated by Clean Harbors Aragonite, LLC (CHA). CHA consents to and will not challenge issuance of this CONSENT ORDER or the Director’s jurisdiction to enter and enforce this ORDER. CHA and the Director are parties to this agreement.
2. The Waste Management and Radiation Control Board has authority to review and approve or disapprove this CONSENT ORDER pursuant to Utah Code § 19-6-104(1)(e).

FINDINGS

3. CHA is a Delaware Limited Liability Company registered to do business in the State of Utah and is a subsidiary of Clean Harbors, Inc., a Massachusetts corporation also registered to do business in the State of Utah. CHA is the owner and operator of the Aragonite facility.
4. The Aragonite facility is a commercial hazardous waste incinerator, transfer, and storage facility located in Tooele County, Utah, and is operated under the provisions of the State-issued Hazardous Waste Part B Permit issued on March 30, 1990, as modified (the Permit). The Permit was renewed and reissued most recently on September 28, 2012.
5. CHA 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.
6. Authorized representatives of the Director conducted a hazardous waste inspection at the Aragonite facility from September 9 through October 1, 2020 (the FY2020 inspection). In addition, the facility self-reported several non-compliance issues during the 2020 fiscal year (October 1, 2019, through September 30, 2020). Based on findings documented during the FY2020 inspection and the self-reported non-compliance, the Director issued NOTICE OF VIOLATION No. 2102003 (the NOV) on March 26, 2021, alleging violations by CHA of its Permit and the Utah Administrative Code (DSHW-2021-001422).
7. CHA filed a response to the NOV on April 23, 2021 (DSHW-2021-006204).

8. On August 24, 2021, CHA filed a request for agency action (RFAA) stating that CHA is “. . . invoking the jurisdiction of the agency by contesting the validity of the . . . Notice of Violation after it was issued on March 26, 2021, and the Proposed Stipulation and Consent Order on July 27, 2021, . . .”
9. Notwithstanding issuance of the NOV, the Director acknowledges improvement in compliance with the Permit and commends CHA’s effort to improve operational practices.
10. Although the collective administrative and operational requirements in the Permit are those determined necessary to achieve compliance with the Act and the Rules, the Director acknowledges that if CHA immediately addresses certain minor administrative violations and implements procedures to prevent reoccurrence, an individual minor violation by itself does not impact the purpose of the Permit to protect human health and the environment.
11. Using enforcement discretion, the Director did not cite CHA for all minor violations documented during the 2020 inspection in the NOV.
12. In accordance with the Civil Penalty Policy, Utah Admin. Code R315-102 of the Rules, which considers such factors as the gravity of the violation, the extent of deviation from the rules, the potential for harm to human health and the environment, good faith efforts to comply, history of noncompliance, and other factors, the Director calculated and proposed a penalty based on the violations alleged in NOV No. 2102003.
13. The Director reduced the calculated penalty as a result of self-reporting non-compliance. The Director also reduced the calculated penalty as a result of improvement with compliance of the Permit.

STIPULATION AND CONSENT ORDER

14. This CONSENT ORDER has been negotiated in good faith and the parties now wish to fully resolve Notice of Violation No. 2102003 without further administrative or judicial proceedings.
15. In full settlement of the violations alleged in NOV No. 2102003 (with the exception of Violation 9), CHA shall pay a penalty of \$42,806.00. CHA shall make payment as follows:
 - 15.01 A cash payment of \$21,403.00 shall be made within thirty days of the effective date of this CONSENT ORDER as described in ¶ 15.02.
 - 15.02 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.
 - 15.03 The amount of \$21,403.00 may be credited to CHA if, within one year of the effective date of this CONSENT ORDER, it completes a Supplemental Environmental Project (SEP) related to ensuring the proper transportation, tracking, and disposal of hazardous waste collected from schools located within the State of Utah. To perform the SEP, at its costs, the following services shall be provided to certain schools identified by the Director: (a) CHA shall provide receptacles for the collection of confiscated vaping devices at Utah schools; and (b) CHA shall provide for transportation and disposal of these confiscated devices. To document appropriate penalty credit of the SEP, within 30 days of completing this SEP, CHA shall

provide breakdown of its costs to implement the SEP to the Director outlining the costs involved, demonstrating that it equals or exceeds the credit specified above.

- 15.04 If CHA elects to forego the SEP described in ¶15.03, fails to complete the SEP, or fails to demonstrate that its expenditures equal or exceed the credit specified above, CHA shall make a cash payment to the Director of the difference between CHA's costs and \$21,403.00 as described in ¶ 15.02.
16. Notwithstanding that the Director and CHA disagree whether Violation 9 of the NOV (related to the bulk solids tank systems and ancillary equipment) is a violation of the Permit, CHA has corrected this bulk solids tank issue. The Director agrees to defer the calculated penalty of \$1,170.00 relating to Violation 9 of the NOV if CHA maintains the bulk solids tunnel secondary containment system in compliance with Condition 4.D.17 and Attachment 3 of the Permit, documents all liquids found in the tunnel in inspection logs, and immediately initiates corrective action required in the Permit.
- 16.01 If CHA complies with ¶ 16 for a minimum of one year from the effective date of this CONSENT ORDER, the Director agrees to vacate the deferred penalty.
- 16.02 If a subsequent notice of violation becomes final that cites CHA for failure to maintain the bulk solids tunnel secondary containment system in compliance with Condition 4.D.17 or Attachment 3 of the Permit within one year from the effective date of this CONSENT ORDER, CHA shall pay the deferred penalty of \$1,170.00 as described in ¶ 15.02.
17. Prior to issuance of the next notice of violation, if any, the Director agrees to provide CHA a *Notice of Intent to Cite Violations (Notice)* for each certain administrative minor violation that is not a reoccurring violation in which the Director determines (1) if the violation was immediately corrected and (2) certain changes to operational practices are implemented that there would be no direct impact to safety and protection of human health and the environment. If within 30 days of receiving the *Notice*, CHA submits to the Director (1) a written certification that it immediately corrected the violation listed in the *Notice*; (2) a description of the procedures CHA implemented to prevent reoccurrence; and (3) a commitment to conduct an audit of its recordkeeping to identify and correct future minor administrative violations at least annually, the Director agrees to find that specific minor administrative violation resolved and agrees, using enforcement discretion, not to issue a notice of violation for that specific violation.
18. As this CONSENT ORDER resolves NOV No. 2102003, within 30 days of the effective date of this CONSENT ORDER, CHA shall file a motion to withdraw its RFFA related to this matter, filed on August 24, 2021.

EFFECT OF CONSENT ORDER

19. 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 CHA and any of CHA's successors, assigns, or other entities or persons otherwise bound by law.
20. 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 CHA 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 CHA facility. However, entry into this CONSENT ORDER shall relieve CHA of all liability for violations which did arise or could have arisen with respect to the allegations contained in NOV No. 2102003.

EFFECTIVE DATE

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

PUBLIC PARTICIPATION

22. 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

23. The undersigned representative of CHA certifies he is authorized to enter into this CONSENT ORDER and to execute and legally bind Clean Harbors Aragonite, LLC.

Pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.*, in the *Matter of CHA Notice of Violation No. 2102003*, the parties hereto mutually agree and consent to STIPULATION AND CONSENT ORDER 2106050 as evidenced below:

CLEAN HARBORS ARAGONITE, LLC

THE STATE OF UTAH
DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL

Eric Gerstenberg, President

Date: _____

Douglas J. Hansen, Director

Date: _____