



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

June 20, 2018

Richard Bay, General Manager
Jordan Valley Water Conservancy District
8215 South 1300 West
West Jordan, Utah 84088

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7003 2260 0003 2353 3964

RE: Notice of Violation No. 1806048

Dear Mr. Bay.:

Enclosed is a NOTICE OF VIOLATION (NOV) based on the failure of Jordan Valley Water Conservancy District to submit a timely Sampling and Analysis Plan for the State Painting (Jenstate) property as ordered. Because of this lack of timeliness, the Division of Waste Management and Radiation Control spent public resources to further characterize the dusty spent blast media that had been wasted at the surface of the property and thereby discovered the existence of an immediate public health problem that resulted in an EPA-directed emergency response action under the Superfund program. Had the Sampling and Analysis Plan been submitted in a timely manner as ordered, the existence of this emergency public health situation would have been known sooner and the Division and EPA would have been able to undertake more timely actions.

You have 30 days from the date of this NOV to contest it in the manner and within the time period prescribed by R305-7-303 of the Utah Administrative Code.

If you have any questions, please call Bret Randall, Assistant Attorney General, at (801) 536-0284.

Sincerely,

Scott T. Anderson, Director
Division of Waste Management and Radiation Control

(Over)

STA/EGC

Enclosure: Notice of Violation, 1806048

c: Raymond Wixom, Assistant Attorney General
Bret Randall, Assistant Attorney General

In the Matter of:

NOTICE OF VIOLATION

Jordan Valley Water Conservancy District

Docket No. 1806048

AUTHORITY

This Notice of Violation (NOV) is issued by the Director of the Division of Waste Management and Radiation Control (Director) under the Solid and Hazardous Waste Act, as amended, Utah Code § 19-6-101 *et seq* (the Act). The Director has specific authority to issue this NOV under Utah Code § 19-6-113.

FINDINGS

1. Jordan Valley Water Conservancy District (“JVWCD”) is a Utah special service district.
2. JVWCD is a “person” as defined in Utah Code Ann. § 19-1-103(4) and is subject to all applicable provisions of the Act and the Utah Administrative Code.
3. As a result of violations of the Act that occurred in connection with a JVWCD facility maintenance project, the Director issued JVWCD a Notice of Violation and Compliance Order (NOV/CO) dated September 22, 2017. The NOV/CO includes five specific violations and five specific compliance orders. A copy of the NOV/CO is enclosed here as Exhibit 1.
4. Compliance Order No. 2 in the NOV/CO states: “Develop a Sampling and Analysis Plan for the Jensen Property for the Director’s review and approval.”
5. By letter dated October 25, 2017, the Director ordered or otherwise required that JVWCD submit the draft Sampling and Analysis Plan referred to in Compliance Order No. 2 within 14 days of the date of receipt of the letter. A copy of the October 25, 2017 letter is enclosed here as Exhibit 2.
6. The October 25, 2017 letter was served via email by counsel for the Director upon counsel for JVWCD on October 25, 2017. A copy of the transmittal email is enclosed here as Exhibit 3. Therefore, the submission of the draft Sampling and Analysis Plan was specifically ordered or otherwise required on or before November 8, 2017.
7. The Director did not grant an extension to the November 8, 2017 deadline.
8. JVWCD did not obtain a stay relating to its compliance with Compliance Order No. 2 of the NOV/CO.
9. JVWCD did not submit any form of a draft Sampling and Analysis Plan for the Director’s consideration until February 9, 2018. A copy of the transmittal email for the draft Sampling and Analysis Plan is enclosed here as Exhibit 4.

DETERMINATION OF VIOLATION

10. Based on the foregoing FINDINGS, JVVCD has violated the NOV/CO, as supplemented, by failing to submit a draft Sampling and Analysis Plan for the Director's review by the date ordered or otherwise required by the Director, within the meaning of Utah Code § 19-6-113.

CONTESTING THIS NOV

10. This NOV is effective immediately and shall become final unless contested in writing within 30 days after the date of this NOV was signed. *See* Utah Admin. Code R305-7-3.
11. To contest this NOV, you must respond in writing and must comply with the applicable procedural requirements found at Utah Admin. Code R305-7 and with the applicable requirements of the Utah Administrative Procedures Act, including Utah Code § 63G-4-201(3)(a) and (b). Those provisions of the Utah Administrative Procedures Act require, among other things, that you state the factual and legal reasons for disagreeing with this NOV, and that you state the action you would like the agency to take (*e.g.*, withdrawing the NOV).
12. JVVCD's contest of this NOV should be addressed to Scott T. Anderson, Director, Division of Waste Management and Radiation Control, P.O. Box 144880, Salt Lake City, Utah, 84114-4880.

Dated this 20th day of June, 2018.



Scott T. Anderson, Director
Division of Waste Management and Radiation Control



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

September 22, 2017

Richard Bay, General Manager
Jordan Valley Water Conservancy District
8215 South 1300 West
West Jordan, UT 84088

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7003 2260 0003 2353 6729

RE: NOTICE OF VIOLATION AND COMPLIANCE ORDER No. 1709022
State Painting Property

Dear Mr. Bay:

Enclosed is a NOTICE OF VIOLATION AND COMPLIANCE ORDER (NOV/CO) based on findings documented by Division of Waste Management and Radiation Control inspectors on December 21, 2016 at a property located at 6594 West Parkway Blvd., West Valley City, Utah. The waste documented was generated from the grit blasting and painting operations performed at three Jordan Valley Water Conservancy District's (JWCD) tank locations. State Painting, who was hired by JWCD for this project, transported solid and hazardous waste to the property identified above and placed spent blast media on the ground.

Please be advised that compliance with this NOV/CO is mandatory and will not relieve JWCD of liability for past violations. Your response will not constitute an administrative contest to this NOV/CO.

You have 30 days from the date of this NOV/CO to contest it in the manner and within the time period prescribed by R305-7-303 of the Utah Administrative Code.

If you have any questions, please call Ed Costomiris at (801) 536-0219.

Sincerely,

for Scott T. Anderson, Director
Division of Waste Management and Radiation Control

(Over)

DSHW-2017-007706

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IR000346

STA/EGC/al

Enclosure: NOV/CO No. 1709022

c: Raymond Wixom, Assistant Attorney General
Bret Randall, Assistant Attorney General
Alex Huggard, Environmental Enforcement Unit, Salt Lake County District Attorney's Office
Gary Edwards, MS, Health Officer, Salt Lake County Health Dept.
Royal DeLegge, MPA, EHS, Environmental Health Director, Salt Lake County Health Dept.
John Hoggan, Salt Lake County Health Dept.
David Duster, U.S. EPA, Region VIII, ENF-R

IR000344

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In the Matter of:	:	NOTICE OF VIOLATION AND COMPLIANCE ORDER
	:	
Jordan Valley Water Conservancy District	:	No. 1709022
	:	

---oo0oo---

This NOTICE OF VIOLATION AND COMPLIANCE ORDER (NOV/CO) is issued by the Director of the Division of Waste Management and Radiation Control pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code Ann. § 19-6-101, *et seq.* The Director has authority to issue such NOTICES and ORDERS in accordance with Utah Code Ann. § 19-6-112.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on available information and the Division of Waste Management and Radiation Control (the "Division") having conducted an independent investigation into the relevant facts, the Division hereby makes the following Findings of Fact and Conclusions of Law:

1. The Jordan Valley Water Conservancy District (JVWCD) is a Utah special service district founded in 1951. It is one of the largest water districts in the state and operates primarily as a wholesaler of water to cities and improvement districts in Salt Lake County.
2. JVWCD is a "person" as defined in Utah Code Ann. § 19-1-103(4) and is subject to all applicable provisions of the Act and the Utah Administrative Code.
3. JVWCD owns and operates significant physical facilities, including large water storage tanks located at 2710 Durban Road, Sandy, Utah (two tanks, one with capacity of 1 million gallons and one with capacity of 2 million gallons) (the "Durban Road Facility"); 6200 South 3200 West, West Jordan, Utah (one tank with the capacity of 2 million gallons) (the "West Jordan Facility"); and 6000 West 4700 South, West Valley City, Utah (one tank with the capacity of 1 million gallons) (the "West Valley Facility").
4. The exterior of at least one of the tanks at the Durban Road Facility was painted with lead-based paint. JVWCD knew or should have known that at least one of the tanks at the Durban Road Facility was painted with lead-based paint.
5. During the course of normal maintenance of its water storage tanks, from time to time, it is necessary for JVWCD to arrange for the removal of old paint (through sandblasting) and repainting or re-coating of water tank exterior and interior surfaces. JVWCD has extensive experience with this maintenance process, which necessarily involves the generation of spent blast media, spent solvents, and unused paint and liquid coating materials. JVWCD has extensive experience with the generation and management of such wastes related to the maintenance of its large water storage tanks.

6. Sometime between April and November of 2016, and possibly as early as 2015, JWCD contracted with State Painting, Inc., which is currently an active Utah corporation (“State Painting”). According to the Utah Division of Corporations public records, the legal registered agent for State Painting is Carrie Jensen with an address of 6594 West Parkway Blvd, West Valley City, UT 84128. Nathan Jensen is the son of Carrie Jensen and represents himself as the owner and operator of State Painting.
7. Despite requests from the Division, JWCD has been unwilling or unable to provide the Director with a copy of the contract with State Painting. Therefore, the findings set forth herein are based on the best information available to the Division.
8. State Painting’s contract included, at a minimum, the following tasks: (a) removing, through sand-blasting, the exterior lead-based paint on one of the water storage tanks at the Durban Road Facility and re-painting the same; and (b) removing the interior surface of the water storage tanks at the West Jordan and West Valley Facilities.
9. State Painting’s contract with JWCD necessarily and inherently involved the generation, storage, transportation, and disposal of solid and hazardous wastes. According to limited information available to the Division, State Painting purchased 99 tons of clean blast media for delivery to the Durban Road Facility; 66 tons of clean blast media to the West Valley Facility; and 33 tons of clean blast media to the West Jordan Facility. JWCD reimbursed State Painting for the foregoing blast media purchases. It is likely that State Painting used additional blast media at any or all of the foregoing facilities for which it was not reimbursed.
10. The Division understands that the blast media delivered to the facilities referenced above had a distinctive green color.
11. On December 15, 2016, the Division received notice that hazardous waste, comprising lead-containing spent blast media, had been moved by a State Painting employee from the point of generation at 2710 Durban Road, Sandy, Utah to State Painting property located at 6594 West Parkway Blvd., West Valley City, Utah. The Division understands that this property is owned by Carrie Jensen in her personal capacity. This property will be referred to herein as the “Jensen Property”. The Jensen Property is approximately 2.5 acres in size.
12. On December 21, 2016, Carrie Jensen granted Division inspectors access to the Jensen Property. While on site, Division inspectors observed the presence of significant volumes of green-colored spent blast media spread throughout the Jensen Property. Division inspectors also observed the presence of six 55-gallon drums that were also filled with green-colored spent blast media. All six drums were marked with the following label: “JWCD Site 9428 (2710 Durban Road, Sandy)”. Division inspectors took samples from three of the drums and a few samples from the spent blast media spread on the ground.

13. During the inspection, Carrie Jensen told Division inspectors that the green spent blast media, barrels, and other wastes were placed on her property without her consent by her son. Carrie Jensen is over 60 years old and is likely not physically involved in her son's contracting business.
14. R315-262-32(b) of the Utah Administrative Code requires that a generator of hazardous waste mark the container with the following words: "HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency."

During the inspection on December 21, 2016, Division inspectors documented two 55-gallon drums of what Nathan Jensen said was spent solvent. The required label was not found on the containers of solvent.

15. R315-262-34(2) requires that a generator of hazardous waste apply the date accumulation began on the container.

During the inspection on December 21, 2016, Division inspectors documented two 55-gallon drums of what Mr. Jensen said was spent solvent. No accumulation start dates were listed on the containers.

16. Carrie Jensen also indicated that in the past, Nathan Jensen and State Painting employees also had buried buckets and drums and poured liquid into holes and trenches on the Jensen Property and then covered them with soil and gravel. The Division has not undertaken any investigation into these issues.
17. Testing conducted by the Division confirmed that three of the six drums present at the Jensen Property were "hazardous waste" as defined by Utah and federal law.
18. Despite repeated requests for information, JWCD has not and, apparently, cannot account for the management, storage, packaging, transportation, or disposal of any of the blast media that was delivered to its facilities described above. Most important, this includes at least 99 tons of clean blast media that was used to remove lead-based paint from the exterior surface of the JWCD water tank at its Durban Road Facility. From these operations, the Division has been able to account for only the six 55-gallon barrels described above.
19. R315-263-11 of the Utah Administrative Code provides that a transporter of hazardous waste shall not transport hazardous waste without having received an EPA identification number from the Director. During the middle of November 2016, at least six drums of waste, three of which were hazardous for lead, were moved from the JWCD Durban Road site to 6594 West Parkway Blvd., West Valley City, Utah by a transporter without an EPA identification number. The Division also concludes that at least 99 tons of spent blast media used to remove lead-based paint was also removed from the JWCD Durban Road Facility under unknown and uncontrolled circumstances, to unknown location(s).
20. R315-263-20 of the Utah Administrative Code specifies that a transporter may not accept hazardous waste from a generator unless it has been properly manifested. An unknown volume of hazardous waste was removed from the JWCD Durban Road Facility, including,

at a minimum, three barrels of such hazardous waste that the Division documented at the Jensen Property.

21. R315-301-4(1) of the Utah Administrative Code states that no person shall dispose of solid waste in any place except at a facility which has a permit in accordance with R315-310. At least 200 tons of spent blast media was generated by State Painting at the three JWCD facilities listed above. At a minimum, all of this material qualifies as a solid waste. At least some of this solid waste was disposed of on the ground at the Jensen Property, apparently without the consent of the owner of the property. Even if the owner had consented, the Jensen Property is not at a facility permitted to receive solid waste in accordance with R315-310.

CONCLUSIONS OF LAW AND DETERMINATION OF VIOLATIONS

Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Division hereby concludes that JWCD has violated the following provisions of the Utah Administrative Code and the Act:

1. UAC R315-262-32(b) by failing to have the required wording on hazardous waste-containing barrels.
2. UAC R315-262-34(2) by failing to apply the date accumulation began on hazardous waste-containing barrels.
3. UAC R315-263-11 by failing to obtain an EPA identification number from the Director prior to transporting and storing hazardous wastes.
4. UAC R315-263-20 by transporting hazardous waste without a manifest.
5. UAC R315-301-4 by disposing of solid waste without a permit.

ORDER

Based on the foregoing FINDINGS and VIOLATIONS, JWCD is hereby ordered as follows:

1. Provide a full accounting of the management, storage, accumulation, testing, manifesting, transportation, and disposal of all solid and hazardous wastes generated at the JWCD facilities described above.
2. Develop a Sampling and Analysis Plan for the Jensen Property for the Director's review and approval.
3. Upon approval of the Sampling and Analysis Plan, implement the Sampling and Analysis Plan and provide the Director a copy of the investigation results.
4. Remove hazardous waste identified during the investigation and remove the spent blast

media that has been placed on the ground at the Jensen Property, with all such wastes being shipped to facilities in accordance with all applicable laws, rules, and regulations.

5. Provide the Division with documentation of completion of the requirements of this NOV/CO.

OPPORTUNITY FOR HEARING

This NOV/CO is effective immediately and shall become final unless Jordan Valley Water Conservancy District administratively contests it. Failure to contest this NOV/CO in the manner and within the time period prescribed by R305-7-303 of the Utah Administrative Code constitutes a waiver of any right of administrative contest, reconsideration, review or judicial appeal.

Utah Code Annotated, Section 19-6-113(2) provides that violation of any order, plan, rule or other requirement issued or adopted under Title 19, Chapter 6, Part 1 may be subject to a civil penalty of up to \$13,000 per day for each day of violation.

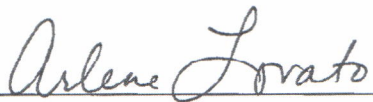
Dated this 22nd day of September, 2017

By: Pusty Lundberg
for Scott T. Anderson, Director
Division of Waste Management and Radiation Control

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing NOTICE OF VIOLATION AND COMPLIANCE ORDER No. 1709022 on the 22 day of September 2017 by US Certified Mail (7003 2260 0003 2353 6729), Return receipt Requested, to:

Richard Bay, General Manager
Jordan Valley Water Conservancy District
8215 South 1300 West
West Jordan, UT 84088



[Arlene Lovato]



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

October 25, 2017

Richard Bay, General Manager
Jordan Valley Water Conservancy District
8215 South 1300 West
West Jordan, Utah 84088

RE: Jordan Valley's Request for Agency Action dated October 20, 2017

Dear Mr. Bay:

The Division of Waste Management and Radiation Control ("DWMRC") has completed its review of the Jordan Valley Water Conservancy District's ("JVWCD") Request for Agency Action ("RFAA") dated October 20, 2017 regarding the Notice of Violation/Compliance Order ("NOV/CO") issued to the JVWCD dated September 22, 2017. While the RFAA included some additional information not previously provided to the DWMRC, this response is not adequate to comply with the NOV/CO, which required a full accounting (Order Item No. 1) as well as a Sampling and Analysis Plan ("SAP") (Order Item No. 2).

With respect to Order Item No. 1, the JVWCD has provided little in the way of substantive information relating to how wastes generated in connection with the project at issue in the NOV/CO were, as a matter of fact, managed, stored, accumulated, tested, manifested, transported and disposed.

With respect to Order Item No. 2, the JVWCD has failed to submit any draft SAP for the Jensen Property for consideration by the DWMRC.

The NOV/CO remains in full force and effect until stayed by an administrative law judge, as provided more fully in Utah Administrative Code R305-7-318 and 319. The DWMRC is not aware of any stay having been issued. Moreover, the Utah Attorney General's Office has advised the DWMRC that the governmental immunity defense raised in the RFAA is without merit as a matter of law. The DWMRC is also unpersuaded that there is merit to the other defenses raised in the RFAA. Therefore, it is the DWMRC's view that the NOV/CO remains in full force and effect and that the JVWCD has not complied with its requirements. If a full accounting and a draft SAP are not provided to the DWMRC within 14 days of the date you receive this letter, additional enforcement actions will be considered.

DSHW-2017-009104

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If you have any questions, please contact Bret Randall, Assistant Attorney General with the Utah Attorney General's Office, by telephone at (801) 536-0284 or by e-mail at bfrandall@agutah.gov.

Sincerely,



Scott T. Anderson, Director
Division of Waste Management and Radiation Control

STA/BFR/kl

- c: Bret Randall, Utah Attorney General's Office
- Raymond Wixom, Utah Attorney General's Office
- Alex Huggard, Environmental Enforcement Unit, Salt Lake County District Attorney's Office
- Gary Edwards Gary Edwards, MS, Health Officer, Salt Lake County Health Dept.
- Royal DeLegge, MPA, EHS, Environmental Health Director, Salt Lake County Health Dept.
- John Hoggan, Salt Lake County Health Dept.
- David Duster, U.S. EPA, Region VIII, ENF-R

Bret Randall

From: Bret Randall
Sent: Wednesday, October 25, 2017 12:15 PM
To: 'mbdurrant@rqn.com'
Cc: 'gsavage@rqn.com'
Subject: signed letter DSHW-2017-009104
Attachments: DSHW-2017-009104.pdf

Hi Marie—

This letter is being mailed out (USPS) today from Scott Anderson to Richard Bay. I wanted to get you a copy via email.

Regards,

Bret F. Randall
Assistant Utah Attorney General
Direct: 801-536-0284
Email: bfrandall@agutah.gov

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Edward Costomiris <ecostomiris@utah.gov>

SAP - 6594 West Parkway Blvd; West Valley City

1 message

Brent Robinson <Brent.Robinson@erm.com>
To: "ecostomiris@utah.gov" <ecostomiris@utah.gov>

Fri, Feb 9, 2018 at 12:25 PM

Ed,

Per our discussion, attached is a draft version of the Sampling and Analysis Plan (SAP) for the site located at 6594 West Parkway Blvd. in West Valley City. I'm generally available early next week, with the exception of Wednesday morning, to discuss.

Thanks and best regards,

Brent

Brent Robinson, P.E.

Partner

ERM

136 East South Temple, Suite 2150 | Salt Lake City, UT 84111 | USA |

T 801-204-4305 | M 801-721-4580

E brent.robinson@erm.com | W www.erm.com**ERM** *The business of sustainability*

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Please visit ERM's web site: <http://www.erm.com>**Jensen Property SAP Draft 2-8-2018 rev.pdf**

2456K