

**OFFICE OF THE NEVADA ENVIRONMENTAL RESPONSE TRUST**  
Le Petomane XXVII, Inc., Not Individually, But Solely as the Nevada Environmental Response Trust Trustee  
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September 3, 2013

**TO:** Greg Lovato (Nevada Division of Environmental Protection) – glovato@ndep.nv.gov  
James Dotchin (Nevada Division of Environmental Protection) – jdotchin@ndep.nv.gov  
Weiquan Dong (Nevada Division of Environmental Protection) – wdong@ndep.nv.gov

**RE:** “MEMO 4” : NERT response to the NDEP e-mail dated August 14, 2013 regarding potential GWETS emergency response actions

As requested, and at the direction of the Nevada Division of Environmental Protection (NDEP), the Nevada Environmental Response Trust (NERT) has prepared the following response to the NDEP email dated August 14, 2013 regarding potential GWETS emergency response actions.

NDEP 1(a): What items are on the list of major problems that Envirogen identified with the system? When did Envirogen identify these problems?

*NERT: Working in tandem with ENVIRON and Envirogen Technologies, Inc. (ETI), NERT assembled a punch-list that was used to evaluate the condition of the GWETS throughout the six-month transition period as defined by the November 18, 2010 Agreement between Veolia and NERT regarding assignment of the 2003 Veolia and Kerr-McGee Contract, and subsequently modified by the Termination Agreement dated July 20, 2013 between Veolia and NERT. Upon the effective date of the transition to ETI as operator, ETI assumed responsibility for all items remaining open.*

*Please see Attachment A.*

NDEP 1(b): What were the “initial critical response repairs”?

*NERT: ETI has been engaged since day one of operation (July 24, 2013) on critical repairs that include many different aspects of the plant, with a focus on systems that present a single point of failure where such failure could cause the GWETS to fail to meet treatment performance standards:*

- 1. Air Compressors. Both the primary and backup units for the air compressor system were repaired and checked for performance over the first weeks of operation. Failure of these components would lead to the inability of a number of plant operations.*

2. Media Separators. *All of the media separators were filled with media from the front-stage FBRs due to a number of the biomass separators and media return pumps being non-operational or not functioning correctly. ETI personnel performed the work necessary to transfer all of this media from the separators to the FBRs so that the fixed film biological treatment process could be sustained. This was of critical importance as the front-stage FBRs treat the majority of the load*
3. Biomass Separator Pumps. *Repair of the biomass separator pumps was required to prevent additional media from carrying over to the media separators. In the event that media did get to the separators, the biomass return pumps needed to be functional. Accordingly, the repair of these pumps was accomplished.*
4. DAF 551. *The overhaul work on DAF 551 was completed and unit is now on-line.*
5. FBR A. *All five of the front-stage FBRs have critical mechanical issues. Overhaul of the first of the five FBRs began on July 31, 2013 and is scheduled to be put back in service by September 15, 2013. Refurbishment of the remaining front-stage FBRs will follow in series over the subsequent months with all FBRs expected to be complete by November, 2013.*

NDEP 1(c): When did NDEP first learn about the situation?

*NERT: This question is directed to NDEP.*

NDEP 1(d): When did NERT first learn about the situation?

*NERT: NERT became aware of the rapidly developing situation involving the performance of the GWETS the first week in July, 2013 through ongoing regular communications with Veolia, ENVIRON and ETI.*

NDEP 1(e): What is being done to make sure this doesn't happen again? How often does Envirogen report to NERT? How often does NERT communicate with NDEP about the site?

*NERT: The critical nature of this situation is almost entirely attributable to the levels within the GW-11 pond. With the ability to hold up to approximately 1 month of influent from the GWETS extraction well network, one of the pond's primary functions is to provide relief to the FBR and/or Chrome GWTP facilities in the event of either scheduled or*

*unexpected maintenance requirements to ensure discharge requirements are not exceeded at the Las Vegas Wash. When NERT first became aware of the developing situation with the performance of the GWETS, the levels in GW-11 had already surpassed 60% of permitted capacity. If the levels of GW-11 were less than 25% of permitted capacity, NERT would have had the necessary capacity in the pond to begin the FBR restoration process without the need to develop an emergency response plan.*

*NERT engages in daily communication with ETI regarding the operation of the GWETS. NERT and NDEP participate in regularly scheduled bi-weekly conference calls to discuss site matters, in addition to other meetings and calls as required.*

NDEP 1(e): Stakeholders request a copy of Wendy Prescott's bio.

*NERT: Please see Attachment B.*

NDEP 1(g): What is the status of the dam permit?

*NERT: On behalf of NERT, ENVIRON submitted all information to NDEP and Nevada Division of Water Resources (NDWR) on July 31, 2013. NDEP and NDWR formally approved ENVIRON's request on August 9, 2013, and August 21, 2013, respectively.*

NDEP 1(f): Has any untreated or partially treated flow been discharged directly to the Las Vegas Wash during this time? If so, how much?

*NERT: There have not been any exceedances of the NPDES permit discharge limitations between February 14, 2011 and June 30, 2013 (from the initiation of Trust ownership of the site to the end of the 2nd Quarter 2013 compliance reporting period). For the current reporting period, please see the letter dated August 29, 2013 to the Nevada Bureau of Water Pollution Control and the subsequent response dated September 3, 2013, Attachments C and D, respectively.*

*Beginning August 4, 2013 and continuing through August 23, 2013 all sampling and analysis indicated that the plant is operating well within its NPDES permit limitations. During this period, daily effluent grab samples collected by ETI have been analyzed for perchlorate. In addition, 7-day composite effluent samples (for the periods ending August 10 and August 17) have been analyzed for NPDES reporting purposes. During this period, effluent daily grab samples were non-detect for perchlorate (laboratory reporting limit of 4.8 ug/L) on all days except August 8, 9, and*

10 during which time perchlorate had been detected at concentrations of 5.8, 6, and 12 ug/L, respectively. Upon receipt of the August 10 sample results (12 ug/L), Test America repeated the analysis and obtained a non-detect (<4.8 ug/L) result for this sample.

For the period August 4-10, 7-day composite samples were made at the site by ETI personnel and at the Test America laboratory, using the daily grab samples described above. Perchlorate was non-detect (<4.8 ug/L) in the composite sample made at Test America, while perchlorate was detected at 9.3 ug/L in the composite sample made at the site. Considering the results from the daily grab samples described above, the Trust believes that this discrepancy resulted from contamination of the sample composited on-site. For the period August 11-17, the 7-day composite sample was non-detect (<4.8 ug/L) for perchlorate.

To ensure accuracy of the results obtained, and to ensure any future issues related to GWETS performance are addressed in a timely manner, the Trust will continue to perform perchlorate analysis on daily effluent grab samples utilizing the Test America laboratory through (at a minimum) the month of August 2013 in addition to its analysis of 7-day composite samples as required by the NPDES permit.

NDEP 1(g): Is it a viable option to potentially relax certain permit conditions (e.g., sulfide levels) during the short-term emergency period if perchlorate effluent limits are being met?

NERT: *ENVIRON does not believe there would be any benefit to a relaxation in any of the numerical effluent limitations in the current NPDES permit during this period. Specifically, there are no parameters which contain a numerical effluent limit in the permit that would (if relaxed) appear to offer any type of relief for the FBR system.*

NDEP 1(h): Why was the non-detect level for perchlorate effluent changed from <2 ppb to <4 ppb?

NERT: *The current laboratory under contract with ETI to provide all analytical services related to permit compliance is Test America Inc. (TA). TA has established a reporting limit of 4.8 ppb in its analysis of composite effluent samples from the GWETS. Prior to April 2013, analytical services were provided by Eurofins with a reporting limit of 0.5 ppb.*

NDEP 1(i): Have you considered hiring a third-party consultant to evaluate the status, operation, and maintenance of the GWETS?

*NERT: NERT has considered and discussed with NDEP the hiring of a third-party to consult with the GWETS operator. However, at this time, NERT and NDEP have determined that there is currently no need to engage a consultant for this purpose.*

NDEP 1(j): How will the effectiveness of Envirogen's operation and maintenance of the system be evaluated going forward?

*NERT: Since July 24, NERT and ETI speak almost daily regarding the operation, repairs and status of the GWETS in addition to weekly conference calls to review the overall operation and maintenance of the GWETS. Once all transition and optimization related repairs are complete, ETI will issue monthly reports to NERT addressing the entirety of the GWETS operations, operation and maintenance included. While an annual report of GWETS operations has not been discussed with NDEP or ETI, NERT would have no objection to the request.*

NDEP 2(a): How will these additional expenses (termination agreement with Veolia and IX unit / emergency FBR refurbishment response plan) affect the budget? What is the total anticipated cost of these additional expenses? How much of these additional expenses are subject to reimbursement by DoD? Which ones?

*NERT: The total allocation in the initial 2013 Trust budget approved by NDEP March 30, 2013, for operation of the GWETS was \$4,114,525.00. This number accounts solely for the operating contract to run the facility, exclusive of utilities and any associated compliance sampling and reporting activities. On August 16, 2013, NERT received budgetary approval from NDEP on Budgetary Amendment 2013-03, which established a new GWETS operational budget of \$5,589,525.00. This increase of \$1,475,000.00 includes all costs related to the operator transition, in addition to those associated with the assumed removal of GW-11 pond solids and the facility aspect of the GWETS 2013 Optimization Plan.*

*Costs relating to Phase I of the Emergency FBR Refurbishment Response Plan, including permit modifications and the installation of the IX system at Lift Station 1, were budgeted separately of general GWETS operations, as discussed above.*

*Of the \$300,000.00 budgeted and approved for this effort, approximately \$85,000.00 will be refunded to the Trust if the system is not utilized. All costs related to this effort will be included in the 2013 submittal to the DoD.*

NDEP 2(b): How much money do you expect will be left in the fund at the end of this year?

*NERT: Assuming complete utilization of the 2013 Trust budget as amended, NERT projects a year-end balance of approximately \$46,400,000.00. This projection includes the recent DoD recovery of \$1,876,423.03 but is exclusive of any additional potential inflows.*

NDEP 2(c): How much money do you anticipate spending each year going forward?

*NERT: On February 6, 2013, NERT presented the long-term financial forecast to NDEP, EPA and the Stakeholders. The assumptions utilized for this forecast will be reanalyzed later this year as the 2014 budget is created.*

NDEP 2(d): Is NERT currently amending the budget? If so, when does NERT expect to finalize it?

*NERT: On August 16, 2013, NERT received budgetary approval from NDEP on Budgetary Amendment 2013-03. Please see Attachment E.*

NDEP 2(e): Is the \$1.8 million that NERT expects to receive from DoD in the next 4 to 8 weeks a result of the 2011 submittal of \$2,211,588.70? If so, which costs did DoD not reimburse? Which costs were reimbursed? Stakeholders request copy of correspondence from DoD regarding this reimbursement

*NERT: The Trust received a payment of \$1,876,423.03 from DoD on August 1, 2013. Yes, this payment was the amount approved by DoD out of the 2011 reimbursement request submitted by the Trust, plus interest. As part of this amount, the DoD reimbursed at least a portion of the costs associated with: (a) the soil excavation and remediation program; (b) operation of the groundwater extraction and treatment system; (c) environmental consultants' fees; (d) attorneys' fees (related to both the remediation and the sale of Trust-owned land and BMI stock interests); (e) land lease payments (for wells located on non-Trust-owned land) and utilities (including electricity and water); (f) agency oversight costs (both NDEP and U.S. EPA); and (g) Trustee's fees.*

*The DoD did not reimburse at least a portion of the costs associated with the following: (a) the monitoring and remediation of chromium at the Site, both in soil and as part of the operation of the groundwater extraction and treatment system; and (b) removal of dioxin-contaminated soil from the Site (the Trust had used dioxins as a surrogate for perchlorate contamination in preparing the reimbursement request). In general, the DoD's rationale for excluding these costs is that the 2006 settlement between Tronox and DoD does not require the agency to reimburse these types of costs, as DoD argued that they are not related to the remediation of chlorate or perchlorate contamination.*

*Please see Attachment F.*

NDEP 2(f): How much has NERT requested DoD to reimburse for the 2012 submittal?

*NERT: The 2012 submittal has yet to be finalized.*

NDEP 3(a): Who owns the IX system? What is the cost to have the system at the site in case it is needed?

*NERT: NERT has leased the IX system from ETI for a 4-month term ending November 30, 2013. If the system is not used during the term, the system can be returned. Assuming return of the system at the end of this term, the total cost to NERT including the negotiated refund for the unused IX resin, will be approximately \$127,500.00, plus applicable taxes.*

*If NERT elects to keep the IX system beyond the 4-month term, a total of \$505,950.00 plus applicable tax, would be due to ETI. This additional expenditure is not planned nor in the current budget.*

*Costs related to permitting for the IX system are not included in the above totals.*

NDEP 4(a): What is the plan for removing solids from GW-11? What is the enhanced evaporation system that ENVIRON is considering for GW-11 and how much will it cost?

*NERT: ETI is currently scheduling a second team of divers to assess the amount and quality of solids in GW-11. Upon analysis of the data obtained from the divers, ETI will develop a scope, work plan and budget for the project. At this point in time, ETI is no longer pursuing the implementation of an enhanced evaporation system for GW-11.*

NDEP 5(a): What is the reason for the \$475,000 termination fee? What was final amount of the fee? How was that final amount calculated? Did NERT get a credit for certain items?

*NERT: As part of the Tronox bankruptcy, the Trust accepted assignment of Tronox's contract with Veolia for the operation of the GWETS. However, as a condition of this assignment the Trust wanted the ability to evaluate Veolia's performance after two years and renegotiate or terminate the Veolia contract if necessary. Veolia and the Trust negotiated an agreement (dated November 18, 2010) allowing the Trust to terminate the main Veolia contract after two years but requiring the Trust to pay a termination fee of up to \$475,000. The costs making up this fee included Veolia's reasonable, documented unamortized mobilization expenses, as well as reasonable demobilization expenses.*

*The final negotiated termination fee paid to Veolia was \$340,000.00. This reduced termination fee was negotiated over a four week period with the reduction based upon the facility condition at the time of transition.*

NDEP 5(b): Why is the Veolia contract confidential?

*NERT: The Veolia contract includes a broad confidentiality provision requiring the parties to keep the majority of the contract and the information created or developed pursuant to the contract confidential. The Trust was not a party to the original negotiations between Veolia and Tronox (then Kerr-McGee) for the contract and so is not aware of the rationale for this provision.*

NDEP 5(c): Stakeholders request copy of the July 10, 2013 Notice of Breach.

*NERT: Please see Attachment G.*

NDEP 5(d): Stakeholders request copy of the June 17, 2013 Notice of Potential Violations.

*NERT: Please see Attachment H.*

Respectfully submitted,

The Nevada Environmental Response Trust



# Attachment A

Task	DESCRIPTION - New top ten	Tag No./ Location
49	• Feed Pump P-102B was removed. Wires were loose but taped off. (Assume this pump is out for maintenance. If the A pump quits no flow can get to the FBR plant)	EQ Area
59	P-602 was running and is a loud motor, possible bad bearings	P-602
50	• The touch screen computer is the original which is not hooked up, may be dead but it fills the hole in the panel	Pad MCC
43	• The air dryer T-802 was NOT functioning Picture shows a fault in lower right hand corner	Compressor Sys
42	• P-802 was in standby ready but also was flashing a service warning	Compressor Sys
37	Reactor biomass separation pump was apart and not operational, parts missing (P-1022)	P1022
39	Return pump was missing and appears to be missing for a while (P-2012)	P-2012
15	Sulfide sensor on the DAF is broken, the one on the cat walk off the FBR is in place but hard to tell if it is operational	DAF
31	DAF Vessel (D-501) had been repaired with patches on the outside and some structural repairs. Inside had been recoated with a powder coating. Lower screw and bearings still need to be re-installed. Drives M-503 and M-504 will also need to be re-checked.	D-501
32	DAF (D-551) had some exterior patches (not as many as D-501). A spot on the north side rear appeared to have a minor leak causing exterior staining. The interior of D-551 may need an overhaul same as D-501	D-551
47	2 of the 6 air lift units were shut down at the panel Of the 4 air lifts that were on only 1 appeared to be operating	Sand Filter
78	• The D-1 sump P-1202 is constantly running and not really draining. The water in the sump appears to be dark colored with sludge floating on top. Sump should be pumped out and cleaned. Pump may also need maintenance	D-1
63	• Filtrate pump appeared to be operating in hand and thus gives me concern on the filtrate tank level switches LS-902	Filter Press Sys
66	Bio filters (T-402A & B) had no material problems evident. Most likely will need media change. Nutrient is not being supplied to the process. The pH of water leaving the unit should be in the range of 2 to 4 standard units (SU). The current reading is 7 SU as verified with the pH meter we now have at the site	T-402A & B
1	Numerous areas where equipment was removed, wiring left open or hanging and no lockout tag out of the breakers done	General
2	Numerous electrical outlets or panels left open and covers removed or missing	General
3	P754A running and P754B in standby. Both pumps were powered by a long extension cord rather than local outlet. Assume there is a problem with outlet. Cord and power strip look like they have been in place for a long time	P-754A & B
4	• Half the lights in the room were burnt out	Pad MCC
5	• Cover of lighting panel was off	Pad MCC
6	• New polymer system was installed using 2 LMI pumps feeding into a flow of SLW thru a static mixer. Discharge is feed by hose to DAFs. Hose is strung on existing piping.	Polymer Sys

7	<ul style="list-style-type: none"> <li>Pressure Control Valve PCV-105 had been replaced with just a ball valve. Piping in the area where the PCV should be was held in place and held up by two come alongs and straps. This valve controls pressure to GAC vessels and allows recycle to EQ tank. Manual valve will not automatically allow more recycle if FBR's go into recycle.</li> </ul>	EQ Area
8	Pressure Transmitter PT-12 was present but just hanging off its mounting	EQ Area
9	<ul style="list-style-type: none"> <li>The EQ area pad was flooded and the sump pump P-1201 for the pad was off and the motor fan cover on the ground. (It should be noted by the end of the day, Veolia had started the pump and cleared the pad)</li> </ul>	EQ Area
10	<ul style="list-style-type: none"> <li>The P-104 pumps were abandoned and the MCC left open in pieces</li> </ul>	EQ Area
11	<ul style="list-style-type: none"> <li>Most of the ceiling lights were out</li> </ul>	Pad MCC
12	<ul style="list-style-type: none"> <li>Lighting control panel had its cover lying on a transformer</li> </ul>	Pad MCC
13	<ul style="list-style-type: none"> <li>Appears the GWTP plant air compressor has been replaced recently, but the electrical connections were made with black tape. (026)</li> </ul>	GWTP
14	<ul style="list-style-type: none"> <li>Electrical box open (025)</li> </ul>	GWTP
16	Fluidization flow valve (slam valve) bypassed with direct air (FV-1011)	FV-1011
17	Fluidization flow valve (slam valve) bypassed with direct air (FV-3015)	FV-3015
18	Fluidization flow valve (slam valve) bypassed with direct air (FV-3016)	FV-3016
19	Fluidization flow valve (slam valve) bypassed with direct air (FV-3017)	FV-3017
20	Fluidization flow valve (slam valve) bypassed with direct air (FV-3018)	FV-3018
21	Fluidization flow valve (slam valve) bypassed with direct air (FV-1012)	FV-1012

22	Fluidization flow valve (slam valve) bypassed with direct air (FV-1013)	FV-1013
23	Fluidization flow valve (slam valve) bypassed with direct air (FV-1014)	FV-1014
24	Fluidization flow valve (slam valve) bypassed with direct air (FV-1440)	FV-1440
25	Based on the above assume reactor distribution system is plugged	FBR-A
26	Based on the above assume reactor distribution system is plugged	FBR-1
27	Based on the above assume reactor distribution system is plugged	FBR-2
28	Based on the above assume reactor distribution system is plugged	FBR-3
29	Based on the above assume reactor distribution system is plugged	FBR-4
30	Reactor biomass separation air lifts (P-3045) are not operational. The air supply regulator is broken and leaks air. The pressure gauges are broken. Air is shut off to the units.	P-3045
33	Reactor biomass separation air lifts (P-3046) are not operational. The air supply regulator is broken and leaks air. The pressure gauges are broken. Air is shut off to the units	P-3046
34	Reactor biomass separation air lifts (P-3047) are not operational. The air supply regulator is broken and leaks air. The pressure gauges are broken. Air is shut off to the units	P-3047
35	Reactor biomass separation air lifts (P-3048) are not operational. The air supply regulator is broken and leaks air. The pressure gauges are broken. Air is shut off to the units	P-3048
36	Reactor biomass separation air lifts (P1425) are not operational. The air supply regulator is broken and leaks air. The pressure gauges are broken. Air is shut off to the units	P-1425
38	Reactor biomass separation pump was apart and not operational, parts missing (P-1021)	P1021
40	Caustic tank T-701 has a problem with a leak from the bottom discharge line	Caustic Sys
41	ED Circulation Pump P-739A was completely missing	ED Sys
44	• Oxygen Generator PX-1601 was shut down and no longer used	Oxygen Sys
45	Level Transmitter LT-1701 was abandoned and bubbler piping in pieces	Sand Filter Reject

46	<ul style="list-style-type: none"> <li>• Level control valve LCV-1701 appeared to be bypassed</li> </ul>	Sand Filter Reject
48	<ul style="list-style-type: none"> <li>• Feed Pump P-102A was in operation but was loud and sounds like bearing problems</li> </ul>	EQ Area
51	Ferrous Sulfate feed system for Hex Chrome removal out of service, one pump missing. With the trash and debris laying around it appears the system has been out of service for a while	Lift 3
52	The turbidity meter at the GWTP is not functioning properly.	GWTP
53	The tube settlers at the GWTP Clarifier are damaged.	GWTP
54	P101B does not have auto control capabilities	EQ Area
55	FBR A Feed controller does not have auto control capabilities	FBR-A
56	GWTP press is leaking bad	GWTP
57	Water leak on suction side of P-3012, approximately 15 drips per minute	P-3012
58	Bio filter Blower (B-402) was not running and was leaking water from the blower	B-402
60	The vibrator for the GWTP Clarifier is not operational.	GWTP
61	<ul style="list-style-type: none"> <li>• Caustic pumps P-711 thru P-718 &amp; P-71A are abandoned and not in use</li> </ul>	Caustic Sys
62	<ul style="list-style-type: none"> <li>• Could not find ferric tank level transmitter LT-751</li> </ul>	Ferric
64	<ul style="list-style-type: none"> <li>• Effluent pipe from D-1 to the EQ area is bypassed and appears to have been leaking. Currently the original undersized effluent line is in operation, potentially causing backpressure on the effluent booster pumps</li> </ul>	D-1
65	<ul style="list-style-type: none"> <li>• In the PLC panel as previously noted the panel lighting system had a dead bulb and had to be examined by flashlight</li> </ul>	Pad MCC
67	Suction piping to P-552 is loose with bolts missing and parts on the ground. Pipe shakes and puts stress on inlet boot when running	P-552
68	<ul style="list-style-type: none"> <li>• Flow transmitter FT-602 was missing</li> </ul>	FT-602

69	Concrete in the area of the tank and vicinity is heavily spalled due to the spill	Caustic Sys
70	Urea pumps P-721 thru P-728 and P-72A are abandoned in poor condition and not in use, some missing	Urea Sys
71	• I did not see the tote mixer M-753 but it may not be needed	Micronutrient
72	• Original pipe stands will need to be regouted	EQ Area
73	GW-11 Repair P-104 pumping system to operational order	EQ Area
74	Water feed for seal to P-3015 was leaking at the connection to the rotameter, approximately 10 drips per minute	Skid-5/6
75	Blower (B-401) is loud and leaking oil badly. To solve problem there was a can of WD-40 next to the blower. Motor also sounds like it needs replacement.	B-401
76	• It should be noted the automatic signals from the press feed pumps appeared to have been removed and thus the automatic system for the filter presses was not operational	Filter Press Sys
77	• Press Feed Pump P-902 was valved out. The air muffler was missing and by the valve positions did not look like it was used	Filter Press Sys
79	• The original polymer system has been completely abandoned. Much of the piping is loose and hanging	Polymer Sys
80	• One of the feed pumps not in operation and has been piped out of service (023)	GWTP
81	The pad is flooding from a leak at the pig launcher system which is a continuous trickle	EQ Area
82	Bad leak noted on P-301A discharge pipe just past the isolation valve. Appears to be a leak at a pipe joint. By the look of the area this leak has been in existence for a number of months. Possible partially treated water leaking to the ground. Leak is about a drip every two the three seconds.	P-301A
83	• ORP reading +350 on transmitter, may be a probe problem (AI-1022)	AI-1022
84	• Looked like battery backup pack for PLC was on the floor not hooked up. Need to investigate battery backup for PLC	Pad MCC
85	Pipe leakage on skid	Skid-A
86	• Pump P753B was missing	Micronutrient
87	• The skid was there but original piping and calibration column was missing	Micronutrient
88	• Pump P-755B was missing	Defoam

89	• Effluent pH AE-128 was missing	EQ Area
90	• Effluent DO AE-11 and AE-13 were both missing	EQ Area
91	• In the MCC room there are numerous indicator lights on the MCC which need replacement	Pad MCC
92	• Mechanical Seal water feed piping in poor shape	Skid-1/2
93	• Mechanical Seal water feed piping in poor shape	Skid 3/4
94	The satellite dish is no longer in use due to sulfide corrosion.	General

## Attachment B



## *Wendy Prescott*

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• Cellular Phone: (702) 371-9307

### *QUALIFICATIONS PROFILE*

Twenty years of progressively responsible experience in operations, maintenance, and laboratory management in both water treatment and mining industries.

Most recently involved with an FBR start up and operations under a full risk service contract for the last 8 years. My duties included operations management, interpretation of analytical data, implementing process monitoring plan along with the process control management plan, developing and implementing safety and operational SOPs, and oversaw all facets of the maintenance program. I was also responsible for contract administration, budgeting, and calculating the compensation due to my employer on a monthly basis.

Experience with laboratory instruments including Ion Chromatography, Ion Selective Electrode meters, Hach spectrophotometers, and many others. Verification and quality control handling of hazardous material.

Excellent communication skills with management, staff and co-workers. Effectively utilize a participatory management style to establish and achieve organizational goals.

Skilled in following proper procedures, independent and group problem solving combined with the ability to follow through with solutions.

### *PROFESSIONAL EXPERIENCE*

- 2012 – Present – **Project Manager** – Envirogen Technologies

Process and Technical Support Specialist, responsible for the support and development of business through process review, pilot testing, control management plan development and costing, as well as, supporting the execution of equipment delivery through providing technical support in the delivery, shake-down, and start-up phases of various projects. Responsibilities include budgeting, staffing, scheduling, accounting, client relations, and overseeing operations, maintenance, laboratory and industrial pre-treatment programs. She is also responsible for implementing terms of the contract as well as local, state and federal regulations

- 2010-2012 – **Assistant Project Manager** – Henderson, NV-  
Veolia Water North America – West, LLC

Assistant Project Manager in a 1.44-MGD ground water treatment facility for a confidential industrial client, under a full risk O&M contract. The plant utilizes fluidized bed reactor technology to remove perchlorate before discharge to the Las Vegas Wash, just upstream of Lake Mead.

Responsibilities included budgeting, staffing, scheduling, accounting, client relations, and overseeing operations, maintenance, laboratory and industrial pretreatment programs. Also responsible for implementing terms of the contract as well as local, state and federal regulations.

- 2003-2010 – **Laboratory Manager/Site Safety Coordinator** – Henderson, NV

Veolia Water North America – West, LLC

Responsible for administrative duties - planning, directing, training, coordinating and supervising laboratory programs and activities associated with the sampling and chemical analysis of compliance, process control, well waters, and surface water samples. Performed a variety of chemical, biological and physical tests required for research and development or quality control. Compiled all data for reporting purposes and assisted in special studies in the laboratory and/or in the field.

Responsible for maintaining site specific safety program, training, and incident reporting. Prepared job hazard analysis, standard operating procedures, and developed power point training presentations. During my tenure there were zero recordable or reportable incidents at the facility. Maintained OSHA 40 hour annual training.

- 2000-2003 – **Carbon handling Tech I,II,III** – Carlin, NV.

Newmont Mining Corporation

Responsible for operating and monitoring strip circuit in support of gold recovery process. Mixing carbon, carbon advancement and tracking carbon loss and recovery. Duties also included some refinery work, forklift operation and truck driving.

- 1994-2000 **Laboratory Tech. I II III** – Carlin, NV.

Newmont Mining Corporation

Responsible for all facets of analytical and robotic operations pertaining to the gold mining industry. Preparing and running samples from wet and dry milling, heap leach, roaster and bioleach processes.

- 1992-1994 –. Sample Prep

**American Assay Lab** – Elko, NV

Responsible for crushing, splitting, drying and pulverizing ore (sample prep). Forklift operator.

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## ***Education***

- *Pierce Junior College, Canoga Park CA. (1986)*

*Moorpark Jr. College, Moorpark, CA. (1985)*

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## ***Certifications***

*Industrial Biological Waste Operator 1, NV*

*Wastewater Quality Analyst, Class II, NV*

# Attachment C

August 29, 2013

Mr. Joe Maez  
Nevada Division of Environmental Protection  
Bureau of Water Pollution Control  
901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701-5249

**Re: July 2013 Groundwater Extraction and Treatment System (GWETS) Upsets and Effluent Perchlorate Results  
Nevada Environmental Response Trust Site; Henderson, NV  
NPDES Permit NV0023060**

Dear Mr. Maez,

The Nevada Environmental Response Trust (NERT or the Trust) maintains NPDES Permit NV0023060 for discharge of treated water to the Las Vegas Wash, as part of their on-going effort to capture and treat groundwater containing perchlorate and chromium at the Trust's site in the Henderson area. Per Table I.A.1. of the NPDES permit, effluent daily discrete samples composited weekly are collected and analyzed for perchlorate at a Nevada-certified laboratory. The perchlorate results for each of the weekly composite samples in the month are averaged to get the 30-day average concentration. The perchlorate effluent limitation is 18 micrograms per liter ( $\mu\text{g/L}$ ) (30-day average). For the month of July 2013, there are five weeks that will be used to calculate the 30-day average for the monthly Discharge Monitoring Report (DMR). During the first week and last week of July 2013, upsets at the groundwater extraction and treatment system (GWETS) occurred that resulted in the discharge of effluent to the Las Vegas Wash with higher than usual perchlorate concentrations in the weekly composite samples, as discussed further below. ENVIRON notes that a transition in GWETS operators from Veolia Water North America (Veolia) to Envirogen Technologies, Inc. (Envirogen) occurred on July 24, 2013.

A number of events occurred during the weeks of June 30 to July 6, 2013 (first week of July) and July 28 to August 3, 2013 (last week of July) that interfered with treatment operations at the site. During the first week of July, power supply fluctuations and extreme heat resulted in equipment failures. These equipment failures and lack of system redundancies led to an inability of the GWETS to treat the influent resulting in several effluent diversions to the GW-11 pond. During the last week of July, a pump failure resulted in an interrupted supply of ethanol to the Fluidized Bed Reactors (FBRs), which also resulted in effluent diversions to the GW-11 pond. The incidents that led to the GWETS upsets and multi-day diversions to GW-11 were highly unusual for this site. ENVIRON is unaware of any other multi-day diversions to GW-11 since the GWETS began operating in February 2004. On the days when all effluent was diverted to GW-11, no daily effluent sample could be collected because there was not a discharge to the Las Vegas Wash. Therefore, as a result of the diversions and interruptions in GWETS operations, the overall effluent flow to the Las Vegas Wash was reduced and there were fewer days of effluent discharge during these two weeks. Consequently, the effluent composite samples for these two weeks were composed of fewer than the standard seven individual daily samples. The perchlorate results for the effluent composite results from these two weeks were  $74 \mu\text{g/L}$  and  $15 \mu\text{g/L}$ , respectively.

Based on these results, additional analyses were performed on all July effluent composite samples to confirm the previous results and to determine if lower laboratory detection limits could be achieved. The results of the additional laboratory analyses by the current analytical service provider, TestAmerica Laboratories, Inc. (TestAmerica), and the former analytical service provider, Eurofins Eaton Analytical, Inc. (Eurofins), are presented in Table 1. To determine the 30-day average effluent perchlorate concentration, the following assumptions were made:

- For duplicate samples, a numerical result reported above the laboratory detection limit was used in place of one-half the detection limit for non-detect results.
- For duplicate samples where laboratory results were above laboratory detection limits, an average of the sample results was used.
- Results reported without flags were used in place of flagged results.

In addition, the daily samples comprising the effluent composite sample from the last week of July were analyzed to obtain more information about the issues occurring at the GWETS during that time. Per Section I.B.2.iv of the NPDES permit, the results of those analyses will be reported in the third quarter NPDES report.

A summary of the weekly composite perchlorate effluent results and weekly average effluent flow rates in gallons per minute (gpm) for July 2013 is shown below.

<b>Weekly Composite Perchlorate Effluent Results and Weekly Average Effluent Flow Rates July 2013</b>			
<b>Week</b>	<b>Composite Sample Date</b>	<b>Perchlorate Result (µg/L)</b>	<b>Average Effluent Flow Rate (gpm)</b>
6/30 – 7/6	7/6	74	442
7/7 – 7/13	7/13	0.94	425
7/14 – 7/20	7/20	1.1	971
7/21 – 7/27	7/27	1.1	886
7/28 – 8/3	8/3	15.5	800
30-day average concentration:		<b>18.5</b>	

As shown above, the 30-day average perchlorate effluent concentration for July 2013 is 18.5 µg/L, slightly above the 18 µg/L effluent limitation per the NPDES permit. Using the weekly perchlorate results and weekly average effluent flow rates, the 30-day average loading to Las Vegas Wash is 0.11 pounds (lbs), which is well below the 0.22 lbs effluent limitation per the NPDES permit.

Since the time of the August 3, 2013 composite sample, Envirogen has reported that the GWETS has been operating in compliance with discharge limitations in the NPDES permit. Envirogen is in the process of refurbishing the FBRs, as well as several other components of the GWETS system, and reinstalling necessary system redundancies. During this time, Envirogen is closely monitoring perchlorate concentrations at the plant using an on-site ion chromatograph (IC) and running process control samples for perchlorate every four hours.

Should you have any questions concerning this correspondence, please contact Allan DeLorme at (510) 420-2565 or adelorme@environcorp.com or Kimberly Kuwabara at (510) 420-2525 or kkuwabara@environcorp.com.

Sincerely,



Allan J. DeLorme, PE  
Principal



Kimberly Kuwabara, MS  
Senior Manager  
Nevada CEM 2353, exp. 3/20/2015

Attachment – Table 1

- cc. Cliff Lawson, Bureau of Water Pollution Control, NDEP
- David Haile, Bureau of Water Pollution Control, NDEP
- Greg Lovato, Bureau of Corrective Actions, NDEP
- James Dotchin, Bureau of Corrective Actions, NDEP
- Weiquan Dong, Bureau of Corrective Actions, NDEP
- Andy Steinberg, Nevada Environmental Response Trust
- Jay Steinberg, Nevada Environmental Response Trust
- Tanya O'Neill, Foley and Lardner LLP
- Todd Webster, Envirogen Technologies, Inc.
- John Pekala, ENVIRON International Corporation

**Table 1: July 2013 Weekly Composite Perchlorate Effluent Results**

Week	Sample Date	Sample Name	Perchlorate Result (ug/L)	Qualifier	Detection Limit (ug/L)	Date Analyzed	Data Used for 30-day Average (ug/L)	Method	Laboratory	Notes	
6/30 - 7/6	7/6/2013	Effluent-Comp	74		4.8	7/22/2013	74	EPA 314.0	TestAmerica	Composite sample composed of fewer than 7 individual samples.	
	8/15/2013 <sup>1</sup>	Effluent-Comp	91	H	4.8	8/16/2013		EPA 314.0	TestAmerica		
7/7 - 7/13	7/13/2013	Effluent-Comp	ND		4.8	7/25/2013	0.94	EPA 314.0	TestAmerica		
	7/13/2013	Effluent-Comp	ND	H	0.95	8/16/2013		EPA 314.0	TestAmerica		
	7/13/2013	Effluent-Comp	0.94	H	0.5	8/16/2013		EPA 331.0	Eurofins		
7/14 - 7/20	7/20/2013	Effluent-Comp	ND		4.8	7/29/2013	1.1	EPA 314.0	TestAmerica		
	7/20/2013	Effluent-Comp	ND		0.95	8/16/2013		EPA 314.0	TestAmerica		
	7/20/2013	Effluent-Comp	1.1		0.5	8/16/2013		EPA 331.0	Eurofins		
7/21 - 7/27	7/27/2013	Effluent-Comp	ND		4.8	8/2/2013	1.1	EPA 314.0	TestAmerica		
	7/27/2013	Effluent-Comp	ND		0.95	8/16/2013		EPA 314.0	TestAmerica		
	7/27/2013	Effluent-Comp	1.1		0.5	8/16/2013		EPA 331.0	Eurofins		
7/28 - 8/3	8/3/2013	Effluent-Comp	15		4.8	8/13/2013	15.5	EPA 314.0	TestAmerica	Composite sample composed of fewer than 7 individual samples.	
	8/3/2013	Effluent-Comp	16		4	8/20/2013		EPA 314.0	Eurofins		
<b>30-day Average:</b>							<b>18.5</b>				

<sup>1</sup> Sample recomposited by Envirogen on 8/15/2013.

H: Sample was prepped or analyzed beyond the specified holding time.

# Attachment D



Joe Maez <jmaez@ndep.nv.gov>

September 3, 2013 11:51 AM

To: "Kimberly Schmidt Kuwabara" <kkuwabara@environcorp.com>

Cc: Cliff Lawson <CLAWSON@ndep.nv.gov>, David Haile <dhaile@ndep.nv.gov>, Greg Lovato <glovato@ndep.nv.gov>, James Dotchin <jdotchin@ndep.nv.gov>, Weiquan Dong <wdong@ndep.nv.gov>, "andrew.steinberg@lepetomaneinc.com" <andrew.steinberg@lepetomaneinc.com>, "Jay A. Steinberg (bankruptcytrustee-receiver@lepetomaneintrustee.com)" <bankruptcytrustee-receiver@lepetomaneintrustee.com>, "toneill@foley.com" <toneill@foley.com>, "twebster@envirogen.com" <twebster@envirogen.com>, John Pekala <jpekala@Environcorp.com>, Allan DeLorme <adelorme@Environcorp.com>

RE: Letter regarding July 2013 GWETS Upsets and Effluent Perchlorate Results

1 Attachment, 22 KB

Kimberly,

NDEP has reviewed this five day report for this plant upset. Based upon our review, NDEP has no further items for follow-up on the July 30 day average exceedance. Please notify David Haile or myself whenever the IX units are used so we can be aware that they are on-line.

Thanks.



**Joseph Maez, P.E., Supervisor**  
**Bureau of Water Pollution Control**  
**Nevada Division of Environmental Protection**  
**901 S. Stewart St., Ste 4001**  
**Carson City NV 89701**  
**p: 775.687.9435 f: 775.687.4684**  
**[www.ndep.nv.gov](http://www.ndep.nv.gov)**

**From:** Kimberly Schmidt Kuwabara [mailto:kkuwabara@environcorp.com]

**Sent:** Thursday, August 29, 2013 4:34 PM

**To:** Joe Maez

**Cc:** Cliff Lawson; David Haile; Greg Lovato; James Dotchin; Weiquan Dong; andrew.steinberg@lepetomaneinc.com; Jay A. Steinberg (bankruptcytrustee-receiver@lepetomaneintrustee.com); toneill@foley.com; twebster@envirogen.com; John Pekala; Allan DeLorme

**Subject:** Letter regarding July 2013 GWETS Upsets and Effluent Perchlorate Results

Joe,

Attached is a letter describing July 2013 effluent perchlorate results related to recent upsets encountered at the Groundwater Extraction and Treatment System (GWETS). The 30-day average perchlorate effluent concentration for July 2013 is 18.5 micrograms per liter ( $\mu\text{g/L}$ ), slightly above the 18  $\mu\text{g/L}$  effluent limitation per the NPDES Permit NV0023060. Please let me know if you have any questions.

Regards,  
Kimberly

**Kimberly Schmidt Kuwabara, MS** | Senior Manager  
ENVIRON International Corporation  
2200 Powell Street | Suite 700 | Emeryville, CA 94608  
T: +1 510 420 2525 | F: +1 510 655 9517 | M: +1 510 926 2276  
[kkuwabara@environcorp.com](mailto:kkuwabara@environcorp.com)

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# Attachment E

**2013 NEVADA ENVIRONMENTAL RESPONSE TRUST BUDGET**

**TRUSTEE**

**LEAD GOVERNMENTAL AGENCY**

Le Petomane XXVII, Inc., Not Individually,  
But Solely as Trustee

**2013 ANNUAL BUDGET**

NDEP : Greg Lovato (775 )687-9373  
glovato@ndep.nv.gov

<b>2013 HENDERSON SITE ADMINISTRATIVE BUDGET</b>	<b>2013 Initial Budget Approved 03/20/13</b>	<b>2013 Amendment 1 Approved 07/08/13</b>	<b>2013 Amendment 2 Approved 07/08/13</b>	<b>2013 Amendment 3 Approved 08/16/13</b>	<b>2013 Amended Budget</b>	
<b>A : TRUST ADMINISTRATIVE SERVICES - LePetomane Entities</b>						
A01 · General Administrative Services	\$ 175,000.00				\$ 175,000.00	
A02 · Matters related to Tronox tenancy and leasehold projects	\$ 50,000.00				\$ 50,000.00	
A03 · Matters related to DOD / Perchlorate reimbursement	\$ 20,000.00				\$ 20,000.00	
A04 · Matters related to Anadaroko litigation	\$ 75,000.00				\$ 75,000.00	
A05 · Matters related to the Treco sale	\$ 90,000.00				\$ 90,000.00	
	<b>\$ 410,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 410,000.00</b>	
<b>B : LEGAL ADMINISTRATIVE SERVICES</b>						
B01 · Services relating to Tenant Matters	\$ 32,500.00				\$ 32,500.00	
B02 · Services relating to Trust Insurance Matters	\$ 7,500.00	\$ 7,500.00			\$ 15,000.00	
B03 · Services relating to the Anadarko Litigation	\$ 5,000.00				\$ 5,000.00	
B04 · Services relating to Trust Property Ownership	\$ 12,500.00	\$ 12,500.00			\$ 25,000.00	
B05 · Services relating to the Treco sale	\$ 75,000.00		\$ 75,000.00		\$ 150,000.00	
B06 · Local counsel services related to the Treco sale	\$ 25,000.00				\$ 25,000.00	
B07 · Services relating to Trust Taxation	\$ 12,500.00				\$ 12,500.00	
	<b>\$ 170,000.00</b>	<b>\$ 20,000.00</b>	<b>\$ 75,000.00</b>	<b>\$ -</b>	<b>\$ 265,000.00</b>	
<b>C : TRUST ACCOUNTING SERVICES</b>						
C01 · General Trust accounting services	\$ 33,000.00				\$ 33,000.00	
C02 · Third-party invoice review	\$ -				\$ -	
C03 · Third-party 2012 financial audit	\$ 12,000.00				\$ 12,000.00	
	<b>\$ 45,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 45,000.00</b>	
<b>D : OTHER ADMINISTRATIVE EXPENSE</b>						
D01 · Northern Trust fees for administrative account	\$ 5,500.00				\$ 5,500.00	
D02 · Local appraisal services related to the Treco sale	\$ 15,000.00				\$ 15,000.00	
D03 · Site Property Tax	\$ 255,000.00				\$ 255,000.00	
D04 · Trust trailer rental	\$ 2,125.00			\$ 1,000.00	\$ 3,125.00	Extra 2 months due to septic issues
D05 · Assumed and Assigned Leases	\$ 38,000.00				\$ 38,000.00	
D06 · Trust General Liability Insurance	\$ 170,000.00				\$ 170,000.00	
	<b>\$ 485,625.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,000.00</b>	<b>\$ 486,625.00</b>	
<b>2013 HENDERSON SITE ADMINISTRATIVE BUDGET</b>	<b>\$ 1,110,625.00</b>	<b>\$ 20,000.00</b>	<b>\$ 75,000.00</b>	<b>\$ 1,000.00</b>	<b>\$ 1,206,625.00</b>	

<sup>1</sup> Items currently not considered to include NDEP oversight of response costs related to releases resulting from the production of perchlorate or chlorate at the site. (PENDING)

**2013 NEVADA ENVIRONMENTAL RESPONSE TRUST BUDGET**

TRUSTEE

LEAD GOVERNMENTAL AGENCY

Le Petomane XXVII, Inc., Not Individually,  
But Solely as Trustee

**2013 ANNUAL BUDGET**

NDEP : Greg Lovato (775 )687-9373  
glovato@ndep.nv.gov

<b>2013 HENDERSON SITE ENVIRONMENTAL BUDGET</b>	<b>2013 Initial Budget Approved 03/20/13</b>	<b>2013 Amendment 1 Approved 07/08/13</b>	<b>2013 Amendment 2 Approved 07/08/13</b>	<b>2013 Amendment 3 Approved 08/16/13</b>	<b>2013 Amended Budget</b>	
<b>ENVIRONMENTAL SITE CONSULTANT <sup>2</sup></b>						
<b>E : Field Program / Soil Excavation</b>						
E01 · Soil Removal Program : East End Beta Ditch	\$ 390,000.00				\$ 390,000.00	
E02 · Interim Soil Removal Actions Completion Reports	\$ 30,000.00				\$ 30,000.00	
E03 · Manganese Tailings Pile Removal Report	\$ 15,000.00				\$ 15,000.00	
E04 · Erosion Repair	\$ 119,000.00				\$ 119,000.00	
	<b>\$ 554,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 554,000.00</b>	
<b>F : Site Operations / Management / Consulting</b>						
F01 · Site Operations and Maintenance	\$ 164,000.00				\$ 164,000.00	
F02 · Site Permitting and Compliance	\$ 192,000.00				\$ 192,000.00	
F03 · Site Management Plan Update	\$ 48,000.00				\$ 48,000.00	
F04 · Site Ongoing Monitoring Well Repair	\$ 150,000.00				\$ 150,000.00	
F05 · Site Security	\$ 47,000.00				\$ 47,000.00	
F06 · Consent Agreement Scheduling and Reporting	\$ 28,000.00				\$ 28,000.00	
F07 · NDEP / Stakeholder Meetings	\$ 105,000.00				\$ 105,000.00	
F08 · GWETS / GWM Analytical Transition Consulting	\$ 48,000.00			\$ (3,000.00)	\$ 45,000.00	
F09 · GWETS Transition Consulting	\$ 59,000.00			\$ (1,000.00)	\$ 58,000.00	
F10 · GWETS Modifications Review and Consulting	\$ 57,000.00			\$ (42,000.00)	\$ 15,000.00	
F11 · GWETS Operations Oversight	\$ 56,000.00		\$ 5,000.00	\$ 23,500.00	\$ 84,500.00	
F12 · AP-5 Solids Removal	\$ 424,000.00				\$ 424,000.00	
F13 · Chlorine Line Relocation Consulting	\$ 18,000.00				\$ 18,000.00	
F14 · Waste Characterization and Disposal	\$ 105,000.00				\$ 105,000.00	
F15 · Matters Relating to Anadarko Litigation	\$ 20,000.00				\$ 20,000.00	
F16 · Matters Relating to Perchlorate Reimbursement	\$ 35,000.00				\$ 35,000.00	
F17 · Preparation of revised EDD (DVSr dated 4/11/11)	\$ 21,000.00				\$ 21,000.00	
	<b>\$ 1,577,000.00</b>	<b>\$ -</b>	<b>\$ 5,000.00</b>	<b>\$ (22,500.00)</b>	<b>\$ 1,559,500.00</b>	
<b>G : Third-Party Operations / Management / Consulting</b>						
G01 · Sale Parcel : HHRA	\$ 335,000.00	\$ 95,000.00			\$ 430,000.00	
G02 · Sale Parcel : Treco Coordination	\$ 15,000.00			\$ 15,000.00	\$ 30,000.00	Additional site inspection attendance and related effort
G03 · AMPAC Contract Technical Evaluation	\$ 10,000.00				\$ 10,000.00	
G04 · BMI Well Reconfiguration	\$ 72,000.00				\$ 72,000.00	
G05 · BMI Complex Communications and Community Interactions	\$ 38,000.00				\$ 38,000.00	
G06 · Tenant Leasehold : Communication and Document Review	\$ 24,000.00				\$ 24,000.00	
G07 · Tenant Leasehold : Activities Associated with Tronox WC Ponds	\$ 19,000.00				\$ 19,000.00	
G08 · Tenant Leasehold : Leasehold Project Management (GES)	\$ 55,000.00				\$ 55,000.00	
	<b>\$ 568,000.00</b>	<b>\$ 95,000.00</b>	<b>\$ -</b>	<b>\$ 15,000.00</b>	<b>\$ 678,000.00</b>	
<b>H : GW &amp; GWETS Compliance / Monitoring / Reporting</b>						
H01 · GWM Field Oversight (VEOLIA Operations)	\$ 98,000.00				\$ 98,000.00	
H02 · GWM Field Oversight (Envirogen Operations)	\$ 26,000.00				\$ 26,000.00	
H03 · GWM Analytical Program Management (ENVIRON/EUROFINS)	\$ 29,000.00				\$ 29,000.00	
H04 · GWM Data Management	\$ 94,000.00				\$ 94,000.00	
H05 · GWM Data Evaluation and Reporting	\$ 226,000.00				\$ 226,000.00	
H06 · GWETS Analytical Program Management (ENVIRON/EUROFINS)	\$ 32,000.00				\$ 32,000.00	
H07 · GWETS Data Management	\$ 54,000.00				\$ 54,000.00	
H08 · GWETS Data Evaluation	\$ 94,000.00				\$ 94,000.00	
H09 · GWM/GWETS Analytical (ENVIROGEN)	\$ 136,664.00				\$ 136,664.00	
	<b>\$ 789,664.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 789,664.00</b>	
<b>2013 HENDERSON SITE ENVIRONMENTAL BUDGET SUBTOTAL</b>	<b>\$ 3,488,664.00</b>	<b>\$ 95,000.00</b>	<b>\$ 5,000.00</b>	<b>\$ (7,500.00)</b>	<b>\$ 3,581,164.00</b>	

<sup>1</sup> Items currently not considered to include NDEP oversight of response costs related to releases resulting from the production of perchlorate or chlorate at the site. (PENDING)

<sup>2</sup> All services for tasks presented on this page to be rendered and invoiced by ENVIRON International Corporation with the exception of tasks G08 and H09 to be facilitated by GES and Envirogen, respectively.

**2013 NEVADA ENVIRONMENTAL RESPONSE TRUST BUDGET**

**TRUSTEE**

Le Petomane XXVII, Inc., Not Individually,  
But Solely as Trustee

**LEAD GOVERNMENTAL AGENCY**

NDEP : Greg Lovato (775 )687-9373  
glovato@ndep.nv.gov

**2013 ANNUAL BUDGET**

<b>2013 HENDERSON SITE ENVIRONMENTAL BUDGET</b>	<b>2013 Initial Budget Approved 03/20/13</b>	<b>2013 Amendment 1 Approved 07/08/13</b>	<b>2013 Amendment 2 Approved 07/08/13</b>	<b>2013 Amendment 3 Approved 08/16/13</b>	<b>2013 Amended Budget</b>	
<b>ENVIRONMENTAL SITE CONSULTANT - Continued</b>						
<b>I : Remedial Investigation</b>						
I01 - Finalization of the RI Work Plan	\$ 50,000.00		\$ 15,000.00	\$ 178,000.00	\$ 243,000.00	
I02 - Third-party RI Work Plan Peer Review (Stakeholders)	\$ 25,000.00				\$ 25,000.00	
I03 - Third-party Cost Estimate for RI Execution (NERT)	\$ 50,000.00				\$ 50,000.00	
I04 - Data Gap : Prepare SAP/QAPP/HASP					\$ 90,000.00	
I05 - BHRA : Preparation / Finalization of Work Plan					\$ 150,000.00	
I06 - Treatability Study : Permeable Reactive Barrier					\$ 13,000.00	
I07 - Treatability Study : Soil Flushing					\$ 17,000.00	
I08 - Community Involvement Plan					\$ 25,000.00	
I09 - Data Gap : Soils Investigation						
I10 - Data Gap : Groundwater Investigation	\$ 5,000,000.00					
I11 - BHRA : Execution						
I12 - Groundwater Modeling				\$ (4,705,000.00)	\$ -	
I13 - Extraction System Optimization Study						
I14 - Treatability Study : Permeable Reactive Barrier						
I15 - Treatability Study : Soil Flushing						
I16 - Preparation of Draft RI Report						
	<b>\$ 5,125,000.00</b>	<b>\$ -</b>	<b>\$ 15,000.00</b>	<b>\$ (4,527,000.00)</b>	<b>\$ 613,000.00</b>	
<b>J : GWETS Facility</b>						
J01 - Veolia Operations	\$ 2,912,500.00			\$ (400,000.00)	\$ 2,512,500.00	Per draft Amendment 3 worksheet dated 7/24/13
J02 - Envirogen Operations	\$ 1,202,025.00			\$ 2,145,000.00	\$ 3,347,025.00	Per draft Amendment 3 worksheet dated 7/24/13
J03 - Utilities	\$ 216,000.00				\$ 216,000.00	
J04 - GWETS 2013 Optimization - ENVIRON	\$ -		\$ 447,000.00		\$ 447,000.00	
J05 - GWETS 2013 Optimization - Envirogen	\$ -		\$ 175,000.00	\$ (143,000.00)	\$ 32,000.00	Per draft Amendment 3 worksheet dated 7/24/13
J06 - PHASE I IX Emergency Response Plan	\$ -			\$ 300,000.00	\$ 300,000.00	Approval received via email
	<b>\$ 4,330,525.00</b>	<b>\$ -</b>	<b>\$ 622,000.00</b>	<b>\$ 1,902,000.00</b>	<b>\$ 6,854,525.00</b>	
<b>K : Trustee Environmental Services</b>						
K01 - Services relating to environmental remediation and restoration	\$ 50,000.00			\$ 75,000.00	\$ 125,000.00	Unanticipated Q2 effort + 30k /quarter Q3 and 4
K02 - Services relating to the GWETS transition and operations	\$ 125,000.00			\$ 20,000.00	\$ 145,000.00	Per draft Amendment 3 worksheet dated 7/24/13
	<b>\$ 175,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 95,000.00</b>	<b>\$ 270,000.00</b>	
<b>L : Legal Environmental Services</b>						
L01 - Services relating to Chartis Remediation Cost Recovery	\$ 20,000.00				\$ 20,000.00	
L02 - Services relating to NDEP meeting participation	\$ 40,000.00				\$ 40,000.00	
L03 - Services relating to NCP Compliance / DOD Submittal	\$ 65,000.00				\$ 65,000.00	
L04 - Services relating to GWETS Operations	\$ 75,000.00		\$ 25,000.00	\$ 80,000.00	\$ 180,000.00	Per draft Amendment 3 worksheet dated 7/24/13
L05 - Services relating to the Community Interview Meeting	\$ -				\$ -	
L06 - Services relating to other Environmental Matters	\$ 80,000.00				\$ 80,000.00	
	<b>\$ 280,000.00</b>	<b>\$ -</b>	<b>\$ 25,000.00</b>	<b>\$ 80,000.00</b>	<b>\$ 385,000.00</b>	
<b>M : Environmental Oversight</b>						
M01 - NDEP	\$ 440,000.00				\$ 440,000.00	
M02 - US EPA	\$ 40,000.00				\$ 40,000.00	
	<b>\$ 480,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 480,000.00</b>	
<b>N : Other Environmental Expense</b>						
N01 - Northern Trust Fees for Environmental Account	\$ 5,500.00				\$ 5,500.00	
	<b>\$ 5,500.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,500.00</b>	
<b>2013 HENDERSON SITE ENVIRONMENTAL BUDGET SUBTOTAL</b>	<b>\$ 10,396,025.00</b>	<b>\$ -</b>	<b>\$ 662,000.00</b>	<b>\$ (2,450,000.00)</b>	<b>\$ 8,608,025.00</b>	
<b>2013 HENDERSON SITE ENVIRONMENTAL BUDGET SUBTOTAL (Page 2)</b>	<b>\$ 3,488,664.00</b>	<b>\$ 95,000.00</b>	<b>\$ 5,000.00</b>	<b>\$ (7,500.00)</b>	<b>\$ 3,581,164.00</b>	
<b>2013 HENDERSON SITE ENVIRONMENTAL BUDGET TOTAL</b>	<b>\$ 13,884,689.00</b>	<b>\$ 95,000.00</b>	<b>\$ 667,000.00</b>	<b>\$ (2,457,500.00)</b>	<b>\$ 12,189,189.00</b>	

<sup>1</sup> Items currently not considered to include NDEP oversight of response costs related to releases resulting from the production of perchlorate or chlorate at the site. (PENDING)

# Attachment F



U.S. Department of Justice

Environment and Natural Resources Division

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Brian H. Lynk  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986

Telephone (202) 514-6187  
Facsimile (202) 514-8865  
brian.lynk@usdoj.gov

February 8, 2013

BY EMAIL AND FIRST CLASS MAIL

Tanya C. O'Neill  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
[toneill@foley.com](mailto:toneill@foley.com)

Re: First Payment Demand Pursuant to 2006 Henderson Consent Decree and 2011  
Substitution and Clarification Agreement

Dear Ms. O'Neill:

I am writing in response to your letter of December 17, 2012, and to confirm what I will be recommending to the Justice Department with regard to the Nevada Environmental Response Trust's ("NERT's") first annual demand for reimbursement from the United States for response costs incurred at the site that is the subject of the above-referenced Consent Decree (the "Henderson Site"). I originally wrote to you on August 13, 2012, identifying a number of objections or questions concerning various elements of the reimbursement request and its supporting documentation. We then exchanged further correspondence and held a number of conference calls in which NERT provided additional documentation and answered pertinent questions, and your December 17<sup>th</sup> letter continued that process of information exchange.<sup>1/</sup>

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<sup>1/</sup> Among the issues I raised in my August 2012 letter was the need for additional information to explain and justify the amount of attorneys fees NERT claimed as recoverable "response costs." See 2006 Consent Decree ¶ 6.c.(i) (attorney's fees shall not be demanded or reimbursed "except as allowed under CERCLA"); see also, e.g., *FMC Corp. v. Aero Indus.*, 998 F.2d 842, 847-48 (10th Cir. 1993) (holding that non-litigating attorney's fees may be recoverable if "necessary to the containment and cleanup of hazardous substances"). In your December letter you provided the additional information I requested, and I am now prepared to recommend payment of the attorney's fees component of NERT's demand. However, I must also respond to your letter's assertion that the amount of fees sought by NERT should have been deemed reimbursable based on EPA's review of NERT's annual budget. That assertion is inaccurate, because such budgetary review does not constitute agreement that any expenses identified in the budget will be reimbursed under the Henderson Consent Decree, nor does it waive or limit the United States' right to review and, on any permissible ground, object to reimbursement demands submitted under that Decree. See, e.g., 2011 Substitution and Clarification Agreement ¶ 2.c ("[NERT]

(continued...)

At the time of my August 2012 letter, I did not have sufficient information to recommend payment in response NERT's demand, for the reasons explained in that letter. However, your subsequent communications and cooperation have proved very helpful, and I am now prepared to recommend payment of the vast majority of the reimbursement amount requested by NERT, while excluding certain costs based on the United States' objections as explained further below.

**A. Calculation of segregable chromium costs to be excluded from demand**

We objected to your original Payment Demand in part because it included potentially segregable chromium response costs, which are expressly defined as non-reimbursable costs under the 2006 Consent Decree. *Id.* ¶ 4.e. You subsequently attempted to identify and segregate the incremental added costs of chromium monitoring and treatment, and our consultant Greg Brusseau has reviewed your calculations and the underlying documentation you provided and sought to verify the accuracy of the identified chromium response cost amounts. As I understand it, these include \$150,952.00 in costs for work performed by Veolia Water North America ("Veolia"), and – according to your calculations – \$23,488.50 for work performed by ENVIRON. I have enclosed a short memo from Dr. Brusseau explaining our understanding of the adjustments and possible issues with the backup documentation (see Attachment 1).

**B. Dioxin-contaminated soil removal costs**

In my August 2012 letter, I explained that the United States objects to the portion of NERT's demand that treats the United States as responsible for payment of certain soil removal costs based on the presence of dioxin contamination in the soil. August 2012 Letter at 5. As I noted then, the Consent Decree does *not* require the United States to pay a defined share of any and all "response costs" incurred by NERT at the Henderson Site. Instead, the Decree expressly limits the United States' reimbursement obligation to a defined share of NERT's costs of responding to contamination "resulting from the production of perchlorate or chlorate at the Henderson Site." NERT's First Payment Demand treats dioxin as a chemical marker that purportedly can serve as a representative surrogate for contamination other than perchlorate or chlorate that may have resulted from the historical perchlorate and chlorate production processes at the Henderson Site. My August 2012 letter objected to this approach as unsupported.

Your subsequent letter of October 12, 2012 cited studies that indicate, in a laboratory setting, that it is possible for dioxin to be generated as a by-product in the electrolysis of brine solutions; you further asserted that electrolytic processes historically were used at the Henderson Site to manufacture both chlorates and perchlorates. Oct. 2012 Letter at 7 and n.1. You also noted that dioxin was sampled at the Henderson Site in the vicinity of historic ammonium

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<sup>1/2</sup>(...continued)

agrees to comply with all requirements and conditions imposed by the 2006 Henderson Consent Decree with respect to future Payment Demands except to the extent the Parties have *expressly* stipulated otherwise *in this Agreement.*") (emphasis added).



perchlorate processing or handling areas such as the AP Plant Tank Farm and the ponds designated as AP-1, AP-2, AP-3 and AP-4. Id. at 7. However, my understanding from discussions with Dr. Brusseau and others is that dioxin generation as a byproduct of electrolysis has been observed only where the process used graphite anodes with coal tar as a corrosion-resistant binder, and only in relatively small quantities. Further, I understand that this type of anode was used at the Henderson Site only in the production of chlorate, not perchlorate. Historical documentation concerning the Henderson Site indicates that platinum, not graphite, anodes were used in the sodium perchlorate production process during the years of partial Navy ownership at the site,<sup>2/</sup> and the ammonium perchlorate process did not use electrolysis at all. Thus, any dioxin sampled in the vicinity of the ammonium perchlorate production area presumably was not a byproduct of the production process, but rather came from some other source.

In addition, even if it is “possible” that chlorate production at the Site could have generated at least some dioxin contamination, there are other potential sources that are least equally if not more likely to be the actual cause of or to have contributed to the dioxin contamination. For example, you acknowledged in the November 29<sup>th</sup> conference call that the Stauffer Chemical Company site (also known as Pioneer) is a potential source of the dioxin contamination, as it hosted a chlor-alkali production process that is understood to generate dioxin as a byproduct. Moreover, I understand dioxin has been found in both soil and groundwater samples taken from the Stauffer/Pioneer site (e.g., by EPA in 1984), and that Stauffer/Pioneer site is located adjacent to and upgradient from the Henderson Site and discharged waste to the Beta ditch, which bisected the Henderson Site. However, NERT did not perform any analysis to assess the likelihood that operations at the Stauffer/Pioneer site may have caused or contributed to the dioxin observed in the soil at the Henderson Site.

Another readily-identifiable potential cause or contributing factor to the dioxin contamination at the Henderson Site is the famous PEPCON disaster of May 4, 1998. On that date, a separate perchlorate manufacturing plant then owned by the Pacific Engineering Production Company of Nevada (“PEPCON”), and located less than two miles distant from the Henderson Site, was completely destroyed by a catastrophic fire followed by “the largest domestic, non-nuclear explosion in recorded history.”<sup>3/</sup> This enormous blast is estimated to have consumed thousands of tons of ammonium perchlorate stored at the PEPCON facility along with large quantities of other chemicals; it generated a shockwave equivalent to a 1 kiloton airblast

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<sup>2/</sup> The document record further indicates that the Site’s operators were required contractually to return the platinum anodes to the Navy upon the Navy’s disposition of its ownership interests at the Site. The Navy ultimately sold its portion of the Site in or about 1962; we do not know whether any different form of anode was used in sodium perchlorate production at the Site thereafter.

<sup>3/</sup> NASA, “From Rockets to Ruins: The PEPCON Ammonium Perchlorate Plant Explosion,” (Nov. 2012) (Attachment 2 to this letter).

nuclear explosion; and it caused structural damage to buildings within a 10-mile radius.<sup>4/</sup> The Henderson Site was well within the impact zone, and the explosion may have led to widespread dioxin deposition throughout the Site. Indeed, as compared with the hypothesis that the observed dioxin contamination resulted from the chlorate production process – a process which historically (prior to 1989) was entirely located in just two buildings, Units 4 and 5 – dioxin deposition resulting from the PEPCON explosion appears on its face to be a more likely explanation for the ubiquitous presence of dioxin throughout the Site. Nonetheless, it appears that this significant potential cause or contributing factor was not even considered by NERT.

NERT also acknowledged at the November conference call that it did not perform a mass balance calculation to demonstrate that is possible for the electrolytic processes historically used at the Site to generate the amount of dioxin excavated from the soil. Nor did it consider the background levels of dioxin in the vicinity of the Site. The lack of such supporting analyses is significant, because it appears highly questionable that the large quantities of dioxin contamination observed at this Site, which prior to soil removal were “ubiquitous” throughout the area (as you acknowledged in our November 29, 2012 conference call), could be attributed to the electrolytic chlorate or sodium perchlorate production processes historically used at the Site.

It also appears that NERT did not consider the possibility that the historic production at the Site of chemicals other than chlorates and perchlorates may have resulted in dioxin contamination. For example, boron trichloride and elemental boron have been manufactured at the Site since at least the early 1970s, and manganese dioxide has been manufactured there since the early 1950s. See [http://www.ndep.nv.gov/bmi/docs/tronox\\_fs.pdf](http://www.ndep.nv.gov/bmi/docs/tronox_fs.pdf) (Nevada Division of Environmental Protection, “Tronox LLC Henderson Facility Fact Sheet,” Dec. 13, 2007).

Finally, NERT did not conduct a forensic finger-printing study of the dioxin contamination at the Site. Again, the lack of such supporting analysis is significant given that there were at least two other known or readily-identifiable likely sources of dioxin contamination.

In summary, there is a great deal of uncertainty regarding whether and to what degree the dioxin contamination in soils excavated by NERT may have “resulted from the production of chlorates” at the Henderson Site. Furthermore, NERT has presented *no* evidence indicating that it could have resulted from perchlorate production at that Site. Thus, NERT’s use of dioxin as a purportedly representative surrogate for non-specific process-related contamination is, at best, speculative and over-stated with respect to chlorate, and lacks any evident support with respect to perchlorate. Accordingly, the United States maintains its objection to the portion of Tronox’s Payment Demand that is predicated on dioxin removal.

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<sup>4/</sup> Id.

**C. Calculation of the recommendation reimbursement amount, and settlement proposal regarding dioxin**

The third and fourth attachments to this letter are tables showing, respectively, the amount of NERT's initial Payment Demand – \$2,174,956.19 (see Attachment 3) – and the amount for which I plan to seek the Department of Justice's approval to request payment from the Judgment Fund of the Treasury Department: **\$1,872,301.91** (see Attachment 4). As shown in Attachment 4, the latter amount is derived by eliminating the "33 percent factor" that NERT used to calculate the amount of dioxin-contaminated soil removal costs to include in its Payment Demand. See August 2012 Letter at 5-6 (discussing NERT's use of "33 percent" and "10 percent" factors in determining the amount of soil removal costs for which it sought reimbursement); October 2012 Letter at 6, 8 (same); see also Attachment 5 (showing that the "10 percent factor" is still included in the amount I will recommend for payment).

The next step for me to seek formal approval from the Department of Justice to request payment of the **\$1,872,301.91** amount, and upon receiving approval, to initiate a payment request to the Judgment Fund. I will start this process forthwith.

Sincerely,

Brian H. Lynk  
Trial Attorney  
Environmental Defense Section

cc: Ann L. Wright, Associate Deputy General Counsel, Department of the Army



# Attachment G

July 10, 2013

ATTORNEYS AT LAW  
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foley.com

WRITER'S DIRECT LINE  
414.297.5836  
toneill@foley.com EMAIL

CLIENT/MATTER NUMBER  
099071-0103

**VIA FEDERAL EXPRESS**

Veolia Water North America  
Operating Services Inc.  
f/k/a USFilter Operating Services, Inc.  
Attn: Vice President/General Manager  
-Western Business Center  
2300 Contra Costa Boulevard #470  
Pleasant Hill, CA 94523

Veolia Water North America  
Operating Services, Inc.  
f/k/a USFilter Operating Services, Inc.  
101 W. Washington Street  
Indianapolis, IN 46204

Re: **NOTICE OF BREACH**

Dear Sir/Madam:

Pursuant to various sections of the Operation and Maintenance Agreement between Kerr-McGee Chemical LLC and Veolia Water North America Operating Services, Inc. ("Veolia") (f/k/a USFilter Operating Services, Inc.), dated June 9, 2003, which agreement was subsequently assigned to the Nevada Environmental Response Trust ("NERT"), effective February 14, 2011, pursuant to that certain Agreement between NERT and Veolia dated November 18, 2010 (with the June 9, 2003 Operation and Maintenance Agreement, collectively referred to herein as the "O&M Agreement"), NERT hereby notifies Veolia that Veolia has breached several provisions of the O&M Agreement, including but not limited to paragraph 6(b). Paragraph 6(b) requires Veolia to operate and maintain the Biological Groundwater Treatment System<sup>1</sup> "so as to produce groundwater leaving the System ('Effluent') which meets the specifications for Effluent set forth on Schedule E (the 'Performance Guarantee')." Last night, Veolia informed NERT that the System, in its current condition, is not capable of meeting the Effluent specifications on Schedule E to the O&M Agreement, as a result of which Veolia has been forced to divert millions of gallons of perchlorate-contaminated Effluent to the GW-11 holding pond. The System has lost its capability to produce compliant Effluent as a direct result of Veolia's failure to maintain the System, including but not limited to its failure to keep all necessary fluidized bed reactors online, maintain adequate redundancy for critical system components, and keep emergency systems (including backup power sources) in operational condition. Accordingly, Veolia has breached its obligation to satisfy the Performance Guarantee under paragraph 6(b) of the O&M Agreement.

Veolia has also breached its obligations under paragraph 6(a) of the O&M Agreement, which requires Veolia to operate and maintain the Existing Groundwater Treatment

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<sup>1</sup> Unless otherwise noted, all capitalized terms used herein shall have the same meaning as that ascribed to them under the O&M Agreement.

Veolia Water North America Operating Services Inc.  
f/k/a USFilter Operating Services, Inc.  
July 10, 2013  
Page 2

Equipment<sup>2</sup> “in accordance with Prudent Industry Practices and Applicable Law.” “Prudent Industry Practices” are defined in the O&M Agreement to include “those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as reasonably prudent in the water and groundwater treatment industry as practiced in the United States with respect to a plant of similar type as the Facility.” As we have previously documented in letters to Veolia, numerous aspects of the Existing Groundwater Treatment Equipment are in extreme disrepair. Veolia’s failure to maintain the Existing Groundwater Treatment Equipment has caused the current inability of the System to produce compliant Effluent. Accordingly, Veolia has clearly failed to comply with Prudent Industry Practice in maintaining the Existing Groundwater Treatment Equipment, as this equipment can no longer effectively function as a groundwater treatment system.

The current issues with the GWETS, as outlined in Veolia’s July 9, 2013 correspondence, are the direct result of Veolia’s failure to properly maintain the GWETS and Veolia’s failure to comply with the O&M Manual as required under the National Pollution Discharge Elimination System (“NPDES”) permit for the GWETS. Veolia’s contention in its July 9, 2013 correspondence that the current issues with the System are the result of “high heat” is disingenuous at best. Had Veolia properly maintained the System and operated the System in compliance with the O&M Manual, the System would not have been adversely impacted by the higher than normal air temperatures in Henderson. Furthermore, had Veolia properly maintained the GWETS and operated it in compliance with the O&M Manual, the impact of the current diversions would not be as dire, as the water levels within GW-11 would not be within a few days of GW-11’s capacity.

For months we have expressed our concern with the state of the GWETS and continually requested that the GWETS be maintained, missing redundant parts be replaced, and deferred maintenance be completed. Veolia has responded to our requests by addressing a small portion of our concerns while continually assuring us that the GWETS was and would continue to be operational. On June 17, 2013, we provided Veolia with notice of its violation of the NPDES permit due to its failure to operate the GWETS in compliance with the O&M Manual, as required by the NPDES permit. As of the date of this letter, we have not received any response from Veolia to our June 17th correspondence. However, despite all of our concerns expressed to Veolia regarding the status of the GWETS and Veolia’s continued assurances that the GWETS was and would continue to be operational, last night Veolia requested that NERT reduce the hydraulic flow to the GWETS by intentionally shutting down some of the groundwater extraction wells, because the GWETS is not able to produce compliant Effluent or even accept the designed load.

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<sup>2</sup> The Biological Groundwater Treatment System and the Existing Groundwater Treatment Equipment are collectively referred to herein as the “Groundwater Extraction and Treatment System,” or “GWETS.”



FOLEY & LARDNER LLP

Veolia Water North America Operating Services Inc.  
f/k/a USFilter Operating Services, Inc.  
July 10, 2013  
Page 3

Due to the severity of the situation, and without waiving any contractual claims NERT has under the O&M Agreement, at Veolia's cost, NERT will make ENVIRON International, Inc. and Envirogen Technologies, Inc. available to assist Veolia, as Veolia requested, in whatever way possible in an effort to prevent any shut down of the groundwater extraction wells and to repair the GWETS such that it can produce Effluent in compliance with the O&M Agreement. In no way shall NERT's provision of assistance be considered NERT's acceptance of Veolia's failure to maintain the GWETS or a release of Veolia's obligations under the O&M Agreement. NERT fully reserves the right to pursue all legal options against Veolia for the damages caused by Veolia's failure to comply with the O&M Agreement. Furthermore, NERT reserves the right to respond further to Veolia's July 9, 2013 correspondence.

This letter constitutes a Notice of Breach and potential Default pursuant to paragraphs 28 and 33 of the O&M Agreement. In the event Veolia fails to adequately address the issues identified above and otherwise operate the GWETS in accordance with the terms of the O&M Agreement, NERT will consider Veolia to be in Default under the O&M Agreement.

Very truly yours,

Tanya C. O'Neill

cc (via email): Nevada Environmental Response Trust  
Nevada Department of Environmental Protection  
United States Environmental Protection Agency  
United States Department of Justice  
Lanita McCauley Bates, Veolia  
Sachin Chawla, Veolia  
ENVIRON International, Inc.  
Envirogen Technologies, Inc.



# Attachment H



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

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foley.com

June 17, 2013

WRITER'S DIRECT LINE  
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toneill@foley.com EMAIL

CLIENT/MATTER NUMBER  
099071-0103

**Certified Article Number**  
7196 9008 9111 2972 9157  
**SENDERS RECORD**

**Certified Article Number**  
7196 9008 9111 2972 9119  
**SENDERS RECORD**

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Veolia Water North America  
Operating Services Inc.  
f/k/a USFilter Operating Services, Inc.  
Attn: Vice President/General Manager  
-Western Business Center  
2300 Contra Costa Boulevard #470  
Pleasant Hill, CA 94523

Veolia Water North America  
Operating Services, Inc.  
f/k/a USFilter Operating Services, Inc.  
101 W. Washington Street  
Indianapolis, IN 46204

Re: Notice of Potential Violations of National Pollutant Discharge  
Elimination System Permit

Dear Sir/Madam:

Pursuant to various sections of the Operation and Maintenance Agreement between Kerr-McGee Chemical LLC and Veolia Water North America Operating Services, Inc. ("Veolia") (f/k/a USFilter Operating Services, Inc.), dated June 9, 2003 (the "O&M Agreement"), which O&M Agreement was subsequently assigned to the Nevada Environmental Response Trust ("NERT"), effective February 14, 2011, Veolia is required to comply with all laws relating to the performance of the Services,<sup>1</sup> including all "Applicable Law." *See, e.g.,* Section 6(a); Section 8; Section 33(a). "Applicable Law" under the O&M Agreement specifically includes "Governmental Approvals," which includes "any permit, license, approval, [or] authorization . . . required . . . for the performance of any of the obligations under this O&M Agreement." The National Pollutant Discharge Elimination System permit for the groundwater treatment system (the "NPDES Permit") is required for Veolia to satisfy its obligations under the O&M Agreement to treat perchlorate-contaminated groundwater in the groundwater treatment system ("GWTS") and discharge it post-treatment, therefore Veolia must comply with all aspects of the NPDES Permit.

Condition I.A.3.b of the NPDES Permit requires submittal of a copy of the Operations and Maintenance Manual ("O&M Manual") for the GWTS to the Nevada Department of Environmental Protection ("NDEP") for approval, as well as compliance with all aspects of the O&M Manual in operating the GWTS. The most recent submittal to and approval by NDEP of the O&M Manual occurred in January 2012, as shown by the letter attached as Attachment 1. Prior to NERT's submittal of this O&M Manual, Veolia confirmed to NERT, via email, that it was the current manual with regard to the operation of the GWTS.

<sup>1</sup> Capitalized terms used and not otherwise defined in this letter shall have the same meaning as that provided in the O&M Agreement.

Veolia Water North America Operating Services Inc.

f/k/a USFilter Operating Services, Inc.

June 17, 2013

Page 2

NERT has been made aware of several aspects of the GWTS that are not in compliance with the most recently approved O&M Manual, including but not limited to the following:

- (1) Appendix N, page 6 of the O&M Manual requires the fluidization rate for all of the fluidized bed reactors (“FBRs”) at the GWTS to be 2000 gallons per minute (“gpm”), but several of the FBRs are currently operating with a fluidization rate of approximately 1000 gpm or less;
- (2) Drawing PID-1N of the O&M Manual requires the fluidization valve for each FBR to be connected to a control solenoid allowing for automatic closure of the valve in the event of power loss, but the control solenoid has been disabled for several of the FBRs;
- (3) Page 2-4 of the O&M Manual requires the FBRs to be equipped with functioning biomass separators, but several of these separators at the GWTS are not operational;
- (4) Chapter 11 of the O&M Manual requires that the GWTS be controlled by two computers to maintain control of the GWTS in the event of loss of one of the computers, but only one computer is currently operational at the GWTS;
- (5) Page 2-8 of the O&M Manual requires that the GWTS have operating caustic pumps in order to control pH within the FBRs, but several of the caustic pumps at the GWTS are not functional;
- (6) Pages 9-21 and 9-22 of the O&M Manual state that the filtrate pump in the GWTS’s filter press system should be capable of automatic operation, but the GWTS currently appears to lack this capability;
- (7) Section 7 of the O&M Manual requires that the GWTS’s biofiltration system maintain proper pH within the GWTS’s aeration system, but available data indicate that the biofiltration system is not maintaining the pH specified in the O&M Manual;
- (8) Page 2-9 of the O&M Manual requires that the GWTS have operating urea pumps in order to control nitrogen and phosphorus addition within the FBRs, but several of the urea pumps at the GWTS are not functional; and
- (9) Section 9 of the O&M Manual states that the filter press system feed pumps should be capable of automatic operation, but the GWTS currently appears to lack this capability.



FOLEY & LARDNER LLP

Veolia Water North America Operating Services Inc.  
f/k/a USFilter Operating Services, Inc.  
June 17, 2013  
Page 3

Pursuant to Paragraph 22(a) of the O&M Agreement, NERT hereby notifies Veolia that it has 30 days to ensure that all aspects of the GWTS, including but not limited to those described above, are in compliance with the most recently approved O&M Manual for the GWTS and, therefore, with the NPDES Permit. To be clear, NERT makes no representations that adequately addressing the issues identified above will bring the GWTS into compliance with the most recent O&M Manual and the NPDES Permit. It is Veolia's responsibility under the O&M Agreement to ensure that all aspects of the GWTS comply with the NPDES Permit.

Per paragraph 28(c) of the O&M Agreement, this notice is being sent via certified mail and is considered effective three business days after deposit. Accordingly, Veolia's 30-day period in which to ensure the GWTS complies with the most recent O&M Manual and the NPDES Permit will run from June 20, 2013 through July 22, 2013. In the event Veolia fails to adequately address the issues identified above and otherwise ensure that the GWTS is in compliance with the O&M Manual and NPDES Permit by July 22, 2013, Veolia will be in default under the O&M Agreement and NERT will be forced to address these issues and any other noncompliance with the O&M Manual that it identifies at Veolia's expense. We expect Veolia to provide to NERT, by no later than July 29, 2013, a summary report detailing the actions taken by Veolia to address the above-listed issues and otherwise ensure that the GWTS is in compliance with the O&M Manual and the NPDES Permit.

Please do not hesitate to contact me if you have any questions regarding the matters discussed above.

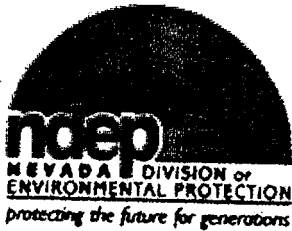
Very truly yours,

Tanya C. O'Neill

LJT

cc (via email): Nevada Environmental Response Trust  
Lanita McCauley Bates  
Sachin Chawla

**Attachment 1**



# STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

February 15, 2012

Allan Delorme, P.E., Managing Principal  
Environ Corp.  
Marketplace Tower  
6001 Shellmound St., Suite 700  
Emeryville, CA 94608

**RE: Receipt of O&M Manual for NERT Perchlorate Removal System – NPDES Permit  
# NV0023060**

Dear Mr. Delorme:

This letter serves as acknowledgment that our office received a CD-ROM copy of the Operations and Maintenance Manual (I.A.3.b) on January 26, 2012. Our office notes the manual's last revision date of Sep. 2006, which would indicate no change since the original O&M approval by NDEP on Nov. 3, 2006. Thank you for the submittal.

If you should have any questions, please feel free to contact me at (775) 687-9424.

Sincerely,

Mark A. Kaminski, P.E.  
Technical, Compliance & Enforcement Branch  
Bureau of Water Pollution Control

cc:

Susan Crowley, C.E.M., % Tronox LLC, P.O. Box 55, Henderson, NV 89009  
Jeryl Gardner, P.E.  
Bonnie Hartley