JOHNSON UTILITIES COMPANY
5230 East Shea Boulevard * Scottsdale, Arizona 85254
PH: (480) 998-3300; FAX: (480) 483-7908

ORIGINAL

0000090042

October 28, 2008

Arizona Corporation Commission
DOCKETED
OCT 29 2008
DOCKETED BY

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

RE: Johnson Utilities Company, H20, Diversified Water Utilities,
Queen Creek Water Company: Compliance with Decision No. 65840
Notices of Violation from ADEQ dated October 20, 2008
WS-02987A-99-0583; WS-02987A-00-0618; W-02234A-00-0371; W-02859A-00-0774;
W-01395A-00-0784

Dear Mr. Johnson:

On October 23, 2008, I received in the mail two Notices of Violation ("NOV") from the Arizona Department of Environmental Quality ("ADEQ") dated October 20, 2008, regarding the alleged illegal disposal of biosolids at the Section 11 WWTF. A copy of the NOV is attached hereto as Attachment 1. Our two responses, dated October 24th, 2008, and October 28, 2008 challenging each of the violations are attached hereto as Attachments 2 & 3 respectfully.

Should you have any questions regarding this event or would like any additional information prior to receiving our response, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Sincerely,

Brian Tompsett
Johnson Utilities, LLC

RECEIVED
2008 OCT 28 P 4: 44
AZ CORP COMMISSION
DOCKET CONTROL

Cc: Docket Control
Steve Olea, Assistant Director
Brian Bozzo, Compliance Manager

ATTACHMENT 1

Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov

Stephen A. Owens
Director

OCT 23 2008

October 20, 2008

Mr. Brian Tompsett, Executive Vice President
Johnson Utilities, L.L.C
d/b/a Johnson Utilities Company
5230 East Shea Blvd.
Scottsdale, Arizona 85254

Re: Complaint Inspection of the Johnson Utilities Section 11 Wastewater Treatment Plant (WWTP), Inventory No. 103081, Aquifer Protection Permit (APP) No. P103081, Reuse Permit No. R105412, Middle Gila River Watershed, Inspection ID No. 128214, Case ID Nos. 102722 and 103357

Dear Mr. Tompsett:

Enclosed are two Notices of Violation ("NOV") and an inspection report prepared by William J. Hare and Daniel Czecholinski concerning the inspections conducted at the site on September 25, and October 7, 2008. The NOVs are being issued for the illegal disposal (burial) of biosolids at the Section 11 WWTF in violation of A.R.S § 49-241(A), the Biosolids Rules promulgated pursuant to A.R.S. § 49-255 *et seq.* and the Aquifer Protection Permit.

The attached NOVs are informal compliance assurance tools used by the Arizona Department of Environmental Quality ("ADEQ") to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an environmental requirement has occurred. They describe the facts known to ADEQ at the time of issuance and cite the requirement that ADEQ believes the party has violated.

Although ADEQ has the authority to issue appealable administrative orders compelling compliance, an NOV has no such force or effect. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected.

The violations alleged in these NOVs involving the improper transportation and disposal of sewage sludge represent serious threats to public health and the environment. Accordingly, ADEQ has proscribed short timeframes for a response, especially the disclosures and certifications required by law (40 C.F.R. 503 *et seq.*). ADEQ reserves the right to take a formal enforcement action, such as issuing an administrative order or filing a civil lawsuit, regardless of whether the Department has issued an NOV. Neither ADEQ's issuance of these NOVs nor its

failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

If you have any questions, regarding the above, please contact me at (602) 771-2209.

Sincerely,

Cynthia S. Campbell

Cynthia S. Campbell, Manager
Water Quality Compliance Section

Enclosure: Notice of inspection rights
Photo-Log from 9/25/08 (Bill Hare)
Photo-Log from 9/25/08 (Daniel Czecholinski)
Photo-Log from 10/7/08
Photographs
Arial view of site
Site diagram
Chain-of-custody

cc: Pinal County Health Department
Facility File, Inventory No.103081
WQFSU Reading File

Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov

Stephen A. Owens
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 102722

October 20, 2008

Johnson Utilities, LLC
Attention: Brian Tompsett
5230 E Shea Blvd
Scottsdale, AZ 85254-5750

Subject: Johnson Utilities Section 11- WWTP, Place ID 142
LAT: 33d, 6', 6" N LNG: 111d, 30', 16" W

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Johnson Utilities, LLC as the owner/operator of Johnson Utilities Section 11- WWTP has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on September 25, 2008.

I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

1. **A.R.S. § 49-241(A)**

   Discharge without an Aquifer Protection Permit.

   On September 25, 2008, ADEQ field staff discovered one open and two buried disposal pits containing biosolids and other debris on the Section 11 facility. These pits are discharging facilities and not covered under an existing Aquifer Protection Permit ("APP").

2. **Permit 35634 (103081) - APP Permit # P-103081, Section 2.1**

   Disposal of sludge in a manner not prescribed in the Aquifer Protection Permit.

   On-site disposal of biosolids (sludge) is not permitted at the Section 11 facility pursuant to the APP issued for the facility.

II. DOCUMENTING COMPLIANCE

1. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a closure plan that achieves clean closure and meets the requirements of A.R.S. § 49-252 and A.A.C. R18-9-A209.
2. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or documentation that the closure plan as approved by ADEQ has been implemented and all closure and post-closure requirements have been completed within the timeframes provided in the approved closure plan.

III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: William J. (Bill) Hare, Water Quality Field Service Compliance Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

IV. STATEMENT OF CONSEQUENCES

1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in this Notice as allowed by law.

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact William J. (Bill) Hare at (602) 771-4838.

John T. Gibbons, Manager
Water Quality Field Service Compliance Unit

John T. Gibbons For
William J. (Bill) Hare
Water Quality Field Service Compliance Unit

Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov

Stephen A. Owens
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 103357

October 20, 2008

Johnson Utilities, LLC
Attention: Brian Tompsett
5230 E Shea Blvd
Scottsdale, AZ 85254-5750

Subject: Johnson Utilities Section 11- WWTP, Place ID 142
LAT: 33d, 6', 6" N LNG: 111d, 30', 16" W

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Johnson Utilities, LLC as the owner/operator of Johnson Utilities Section 11- WWTP has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on September 25, 2008.

I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

1. **A.A.C. R18-9-1003(A)**

   Use of biosolids, application of biosolids, or placement of biosolids on a surface disposal site in a manner that is not consistent with the applicable biosolids rules.

   On September 25, 2008, ADEQ field staff discovered one open, and two buried, disposal pits containing biosolids and other debris at the Section 11 facility. The pits constitute surface disposal sites under the biosolids rules and are not constructed or operated in accordance with the biosolids rules.

2. **A.A.C. R18-9-1011(D)(1)**

   Failure to immediately pick up biosolids spilled while being transported, including any visibly discolored soil.

   On September 25, 2008, ADEQ field staff observed loose biosolids scattered on the ground surface near the disposal pits.

3. **A.A.C. R18-9-1011(D)(2)**

   Failure to notify ADEQ within 24 hours after a spill of bulk biosolids while being transported.

   ADEQ has no record of notification from Johnson Utilities of a spill of bulk biosolids.

4. **A.A.C. R18-9-1011(D)(2)**

   Failure to submit written notification to ADEQ within seven days after a spill of bulk biosolids while being transported.

   ADEQ has no record of written notification of a spill of bulk biosolids by Johnson Utilities.

5. **A.A.C. R18-9-1002(E)(1) / 40 CFR § 503.24(g)(1)**

   Failure to collect and dispose of run-off from an active sewage sludge unit in accordance with National Pollutant Discharge Elimination System permit requirements or any other applicable requirements.

   Johnson Utilities constructed sewage sludge units, land on which only sewage sludge is placed for final disposal, at the Section 11 facility without a stormwater run-off collection system.

6. **A.A.C. R18-9-1002(E)(1) / 40 CFR § 503.24(h)**

   Failure to operate and maintain the leachate collection system for an active sewage sludge unit that has a liner and leachate collection system during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

   Johnson Utilities constructed sewage sludge units without liners or leachate collection systems.

7. **A.A.C. R18-9-1002(E)(1) / 40 CFR § 503.24(n)(1)**

   Failure to ensure that sewage sludge placed on an active sewage sludge unit does not contaminate an aquifer.

   Johnson Utilities constructed sewage sludge units without liners, leachate collection systems, or any other means of preventing contamination of the aquifer, placing hundreds of cubic yards of sludge directly into pits dug at least 6 feet below ground surface.

8. **A.A.C. R18-9-1002(E)(1) / 40 CFR § 503.24(n)(2)**

   Failure to use results of a ground-water monitoring program developed by a qualified ground-water scientist or a certification by a qualified ground-water scientist to demonstrate that sewage sludge placed on an active sewage sludge unit does not contaminate an aquifer.

   Johnson Utilities has not developed a ground-water monitoring program for the sewage sludge units constructed at the Section 11 facility.

9. **A.A.C. R18-9-1002(E)(1) / 40 CFR § 503.25(a)**

   Failure ensure that either Class A or Class B pathogen requirements are met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

   At the time the sludge was dumped in the three pits dug at the Section 11 facility, Johnson Utilities failed to conduct any analytical sampling to ensure that Class A or Class B pathogen requirements were met.

10. **A.A.C. R18-9-1002(E)(1) / 40 CFR § 503.26(c)**

    Failure to continuously monitor air for methane gas in structures within a surface disposal site and at the property line of the surface disposal site during the period that the surface disposal site contains an active sewage sludge unit on which the sewage sludge is covered and for three years after a sewage sludge unit closes when a final cover is placed on the sewage sludge.

Johnson Utilities failed to monitor air for methane gas at the property line of the surface disposal site or anywhere at the Section 11 facility where sludge was dumped in three pits.

11. **A.A.C. R18-9-1002(E)(1) / 40 CFR 503.27(a)(2)(iii)**

    Failure the owner/operator of a surface disposal site to develop and retain for five years, a description of how the best management practices have been met for sewage sludge (other than domestic septage) placed on a surface disposal site.

    ADEQ has reason to believe Johnson Utilities does not have any records or descriptions of how best management practices have been met for disposal of sewage sludge in the three pits dug at the Section 11 facility.

12. **A.A.C. R18-9-1002(E)(1) / 40 CFR 503.27(a)(1)(ii)**

    Failure of the person who prepares the sewage sludge to develop and retain for five years, the required certification statement for sewage sludge (other than domestic septage) placed on an active sewage sludge unit.

    Based on the statements made by a Johnson Utilities representative on September 25, 2008, ADEQ has reason to believe the sludge dumped in the three pits at the Section 11 facility originated from wastewater treatment facilities owned and operated by Johnson Utilities. As preparer of the sludge dumped in three pits on the Section 11 facility, Johnson Utilities did not develop or retain the required certification statement regarding the sewage sludge.

13. **A.A.C. R18-9-1002(E)(1) / 40 CFR 503.27(a)(2)(ii)**

    Failure the owner/operator of a surface disposal site to develop and retain for five years, the required certification statement for sewage sludge (other than domestic septage) placed on a surface disposal site.

    ADEQ has reason to believe Johnson Utilities failed to develop or retain the required certification for the sewage sludge placed in the pits at the Section 11 facility.

II. DOCUMENTING COMPLIANCE

1. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or manifests, bills of lading or any other documentation of shipments for all biosolids deposited at the Section 11 facility, including, but not limited to, biosolids originating from Section 11.
2. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or the date(s) when biosolids were deposited at Section 11 facility, the originating facility of each shipment of biosolids, the quantity or volume of each shipment, the method of transportation for each shipment, and any analytical sample results taken from each biosolids shipment, including any laboratory data sheets.
3. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or the name and ADEQ certification number for every operator in

the employment of Johnson Utilities, L.L.C. at any wastewater or drinking water facility with knowledge of the shipment of biosolids to the Section 11 facility.

4. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or the identification of every individual and company (other than Johnson Utilities, L.L.C.) that engaged in the transportation of biosolids to the Section 11 facility.

5. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or the name of every Johnson Utilities, L.L.C. employee that engaged in the transportation to or placement of biosolids at the Section 11 facility.

6. Within 5 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a detailed description of biosolids or biosolids contaminated materials removed from the Section 11 facility on or after September 25, 2008. The report shall include a complete description of the excavation procedures, and, for all material excavated and removed from the Section 11 facility:
   1. The date(s) of excavation and removal;
   2. Any analytical samples taken of the materials or the surrounding soil or groundwater, including laboratory documentation of the sample results;
   3. The quantity or volume removed and the method for estimating quantity or volume;
   4. The method of transportation from the Section 11 facility to any other location, including any shipping records, manifests or bills of lading;
   5. The location(s) where materials removed were deposited, including receipts from the disposal sites;
   6. Any correspondence between any individuals or entities, including electronic mail messages, in the possession of Johnson Utilities L.L.C relating to or referencing the removal;
   7. The identification of every individual and company (other than Johnson Utilities, L.L.C.) that engaged in the excavation or transportation of materials removed; and
   8. The name of every Johnson Utilities, L.L.C. employee that engaged in the excavation or transportation of materials removed, including the supervision of those activities.

7. Within 10 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or any correspondence between any individuals or entities, including electronic messages, in the possession of Johnson Utilities L.L.C. relating to or referencing the storage or dumping of biosolids at the Section 11 facility at any time, including the deposition of biosolids from the Section 11 facility.

8. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or documentation that all biosolids and biosolid contaminated materials have been removed from the excavation on the Section 11 facility, along with an explanation for the basis of the conclusion that all biosolids and biosolids contaminated materials have been removed. The documentation shall include, but is not limited to, laboratory analysis, chain-of-custody forms, a detailed site plan and shipping documents for biosolids transported to the Section 11 facility and shipping documents for biosolids and biosolid contaminated materials transported from the Section 11 facility.

III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Daniel L. Czecholinski, Water Quality Compliance Assurance Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

IV. STATEMENT OF CONSEQUENCES

1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in this Notice as allowed by law.

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Daniel L. Czecholinski at (602) 771-4612.

Marcia R. Colquitt, Manager
Water Quality Compliance Assurance Unit

Marcia Colquitt for
Daniel L. Czecholinski
Water Quality Compliance Assurance Unit

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY COMPLIANCE SECTION
Compliance Assurance/Field Services Units

INSPECTION REPORT - WASTEWATER

Facility: Section 11 WWTP

Place ID No: 142

Aquifer Protection Permit: P103081

AZPDES Permit No: N/A

Reuse Permit No: Type 3 General Permit, R105412

Inventory No: 103081

Inspected by: John Gibbons, Manager
Daniel Czecholinski, EPS
William J. Hare, EPS

Inspection Dates: Sept. 25, 2008
Oct. 7, 2008

Accompanied by: Gary Larsen

Report Date: October 15, 2008

	YES	NO	N/A	UNKNOWN
1. WWTF quality meets the following permit requirements:				
A. Aquifer Protection Permit		X*		
B. Reuse Permit				X
C. AZPDES Permit			X	
2. A certified operator is employed by the owner per ADEQ regulations.	X			
3. This system meets APP requirements for operation and maintenance.		X*		

* The inspection found that the facility had buried biosolids on the facility property.

Inspection Purpose and Scope:

This was an unannounced complaint inspection regarding allegations that Johnson Utilities had unlawfully disposed of sewage sludge, or biosolids, (buried) at the Section 11 WWTP.

Facility Description:

The Johnson Utilities Section 11 wastewater treatment plant (WWTP) is located adjacent to Hunt Highway, approximately nine miles southeast of Queen Creek. The WWTP has the capacity to collect and treat up to a maximum monthly average flow of 1.6 million gallons per day (MGD) of wastewater received from residences and small businesses located in the central and southern portions of the Johnson Utilities service area. The treatment process consists of a headworks with

a bar screen, a flow splitter box, four aerated lagoons, 16 wetland cells, liquid chlorine disinfection and an effluent pump station. All of the aerated lagoons and 16 wetland cells of the WWTP have a permeability of less then 550 gallons per day per acre. The WWTP process employs nitrification-denitrification to achieve an effluent Total Nitrogen level of 10 mg/L and chlorine disinfection.

Current Permit Status, LTF No. 35634:

On April 10, 2006, Johnson Utilities Company (JU) was issued an amended APP, LTF No.35634 that authorized the replacement of the existing wetland treatment facility of 1.6 MGD capacity with a new extended aeration WWTP of 2.0 MGD capacity. The new WWTP will be located within the existing WWTP site. This permit does not authorize the disposal or burial of biosolids at the WWTP site.

Once the new WWTP is constructed, the permittee will be authorized to operate a 2.0 MGD WWTP. The WWTP process will consist of head works with screens, an equalization basin, anoxic and aeration basins for nitrification- denitrification, secondary clarifiers, filters, ultraviolet (UV) disinfection system, aerobic sludge digesters, sludge belt press thickeners, and an effluent pump station. The equalization basin will also be used to store wastewater during emergencies. The WWTP will also have a provision of chemical addition in conjunction with filtration. The effluent will be disposed by recharge or reuse under a valid reuse permit. All of the sludge including screenings, grit, and scum, will be hauled off-site.

Pending Permit, LTF No. 44231:

The facility has applied for an amended APP to replace the current APP permit, LTF No.35634. The amended APP would increase the flow rate from 1.6 MGD to 4.5 MGD. This will entail the construction of two mechanical treatment, activated sludge trains, each with a capacity of 2.25 MGD. This permit amendment is in the substantive review phase with ADEQ's Groundwater Section. This permit amendment will also establish aquifer quality limit (AQL) limits for groundwater monitoring. There are no provisions in this permit amendment for the onsite disposal (burial) of sludge.

Inspection Details:

Pre-inspection discussions at the site:
The inspection began with the execution of an inspection rights form by Johnson Utilities General Manager Gary Larsen. Mr. Larsen was questioned about allegations regarding the burial of biosolids at the Section 11 plant in the spring of 2008. Prior to ADEQ's discovery of buried biosolids the following information was furnished by Mr. Larsen:

- During the timeframe of April – May 2008 Johnson Utilities (JU) was transitioning from the services of Chemical Transport Company (CT) to JU for sludge hauling.
- JU officials were in the process of purchasing truck(s) to haul the sludge generated by the various WWTPs operated by the company.

- During this timeframe, sewage sludge (biosolids) from the Pecan WRP and the San Tan WRP was temporarily stored at the Section 11 WWTP.
- Mr. Larsen was not aware of the burial of any sewage sludge onsite at the Section 11 WWTP.
- Mr. Larsen advised that, according to his recollection, the sewage sludge in question had been removed from the Section 11 WWTP and transported to the Ironwood landfill. This occurred after JU officials had purchased new sludge hauling equipment in the summer of 2008.
- The amount of sewage sludge stored at the Section 11 site was estimated at near 200 cubic yards including 20 cubic yards per week from the Pecan WRP and about 10 yards every other week from the San Tan WRP over an eight week period of time.
- There was no mention that any biosolids were presently being stored at the site.

Site Review:

Mr. Larsen showed the ADEQ inspectors an area where he stated the sewage sludge had been temporarily stored at the site. The referenced area was located near one of the lagoons and did not appear to have any disturbed soils or other indications that sewage sludge had been stored in this area.

The site tour subsequently was directed by ADEQ inspectors to the east side of the WWTP where a significant amount of biosolids was observed to be scattered on a surface area, 750 x 50 feet ("disposal area"). The disposal area is near the JU fence line on the east side of the 640 acre property.

The disposal area contained a large open depression (pit) where concrete and plastic debris, along with biosolids had been deposited. The pit was 335 x 37 feet in dimension and included a ramp on the south end and a second ramp on the west end. This pit is identified by ADEQ as pit #1; see site diagram and photographs DC-3 through DC-9, 7, 8, 9 and 10. This pit is at least 6 feet deep. When ADEQ staff walked into this pit they were below grade and were standing on top of biosolids that were covered with 2-3 inches of soil.

ADEQ staff also identified two additional pits in the disposal area where biosolids had been buried. ADEQ has identified these pits as pit #2 and #3 (see site diagram and photographs # DC-1, DC-2, 2 and 11). Pit #2 is 97 x 37 feet and pit #3 is 93 x 37 feet.

There were numerous areas where biosolids were visible on the surface area (see photographs DC-1 – DC-9, 1, 3-11 and 19). The biosolids were dry on the surface area. However, the biosolids beneath the ground surface were moist and very odorous.

ADEQ staff observed a buried blue plastic pipe on the west side of pit #1, see site diagram. The contents of the pipe are unknown, as is its origin and outfall location.

ADEQ staff inquired of Mr. Larsen as to whether a back hoe might be available for digging in the disposal area. After making a telephone call, Mr. Larsen reported that the facility's back hoe was inoperable. Mr. Larsen then was informed that ADEQ wanted to excavate some selected

areas with a boring device provided by ADEQ to examine the subsurface strata for possible burial of biosolids. ADEQ employed an an auger device that drilled about 3-5 feet deep and eight inches in diameter.

Excavation of Burial Site:

The inspectors dug six soil borings with the auger device. Three of the six borings contained biosolids 2-5 feet below the ground surface (see site diagram and photographs # 12, 13, 15 -18). The biosolids had a strong sewage odor and were black in color. Mr. Larsen stated that he could smell the biosolids after the auger was used.

Subsequent to ADEQ use of its auger, JU employees appeared and utilized a back hoe to excavate several trenches where biosolids were identified based on odor and color (see site diagram and photographs # 18, 20 and 21). As noted above, the buried biosolids were still moist and very odorous. The surface areas inspected appeared very unstable and on several occasions the ground surface collapsed and the inspectors 'sank' below the ground surface 1-2 feet (see photograph # 14).

Sampling Event:

Four split samples of biosolids and one of background soil were obtained. A background sample of native soils was taken approximately 30 feet west of pit #2. The background soil was the first sample taken. The biosolids samples were taken at the various auger borings, trenches dug during the inspection and by digging with a shovel. The sampling event included one sample from the interior surface of pit #1, one from the west side of pit #1, one from the auger boring in pit #2, one from the trench dug in pit #3 (see site diagram). A shovel was utilized for sampling. The biosolids were placed in a bucket with the shovel where the spilt sample was pulled using a smaller sampling scoop. A chain-of-custody was completed and the samples were placed in a cooler with ice. The samples were submitted to Aquatic Consulting and Testing, Inc for analysis. The analysis requested was: fecal coliform, dry weight, nitrate nitrogen, ammonia nitrogen and TKN. ADEQ is waiting for complete sample results, although sample results are not necessary for ADEQ to identify the buried material as sewage sludge, or biosolids.

October 7, 2008 Follow-up Inspection:

ADEQ conducted a follow-up inspection on Tuesday October 7, 2008. Ms. LeeAnna Martinez, Solid Waste Specialist from ADEQ's Solid Waste Division was present to conduct a solid waste inspection at the same time. ADEQ staff arrived at the Johnson Utilities Section 11 Plant at approximately 9:15 am and parked outside the facility. WQCAU staff called Mr. Gary Larsen of Johnson Utilities to inform him that ADEQ was conducting an unannounced follow-up inspection and left a voice message. Mr. Larsen returned the call at approximately 9:20 am and informed WQCAU staff that they could not enter the facility without him. WQCAU staff informed Mr. Larsen that they were outside the facility and would not enter without him. ADEQ staff observed dust from the far east side of the property, but could not see the source of the dust. WQCAU staff also observed a white pick-up inside the facility. The truck headed east toward the area where the dust was coming from. A black pick-up truck left the Johnson Utilities

Section 11 Plant at approximately 9:30 am. There were two or three occupants in the vehicle. At approximately 9:40 am, Mr. Larsen arrived on site. An inspection rights form for the solid waste inspection was signed by Mr. Larsen. Mr. Larsen informed ADEQ that Johnson Utilities had retained counsel and that he was not allowed to answer any questions.

During the September 25, 2008 inspection, Mr. Larsen identified a portion of the Section 11 facility where he claimed biosolids had been stored prior to being shipped to the Ironwood landfill. On October 7, 2008, WQCAU staff requested to see that location and followed Mr. Larsen's vehicle to the area he identified on September 25, 2008. WQCAU staff did not see any visible signs of biosolids at this location (see photographs DC-10, DC-11, and DC-12). The ground has not been disturbed and there has been no visible damage to the vegetation in this area.

WQCAU staff then asked to view the disposal area where ADEQ observed buried biosolids on September 25, 2008. The entire disposal area where ADEQ observed biosolids on the surface and where biosolids had been buried had been excavated (see photographs DC-13 thru DC-21, and DC-24). The excavation was 3 to 4 feet to approximately 8 to 10 feet deep (see photographs DC-13 thru DC-16, and DC-18 thru DC-21). The excavation included the entire disposal area measured by ADEQ on September 25, 2008 as 750 x 50 feet. WQCAU staff asked Mr. Larsen where the material (biosolids and soil) went. Mr. Larsen responded by saying "what material?" WQCAU staff then asked if Johnson Utilities had any shipping documents relating to the materials excavated. Mr. Larsen responded: "You will have to talk to the lawyer." WQCAU staff observed water and mud with fresh equipment tracks inside the excavation (see photographs DC-17, DC-18 and DC-19). WQCAU staff observed a black hose entering the property under a gate on the south side of the property (photograph DC-22); this hose was connected to a sprinkler/hose. Mr. Larsen referred to the sprinkler as "the big gun." Photograph DC-23 is of a blue box in the approximate area where ADEQ observed a blue plastic pipe on September 25, 2008. ADEQ inquired about this box and Mr. Larsen confirmed that it is the location where the blue pipe was observed. Mr. Larsen also stated that the pipe was abandoned. Mr. Larsen stated that he informed WQCAU staff that the pipe was abandoned on September 25, 2008. Northwest of the excavation there was a large dirt and concrete pile (photographs DC-16 and DC-25) that was not present on September 25, 2008. A John Deere Ejector Scrapper (see photographs DC-26 and DC-27) was located at the north end of the property, just west of the berm. WQCAU staff observed freshly laid soft soil and debris adjacent to the berm (photographs DC-28 thru DC-35). The plastic debris in the soft soil is consistent with the debris that ADEQ identified during the September 25, 2008 inspection (see photographs DC-4 thru DC-9, 7 and 9).

Findings:

The inspection found evidence that JU officials had buried an unknown quantity of biosolids on the east site of the property. This is believed to have occurred during the spring and summer of 2008.

Compliance Summary:

(1) Monitoring and Reporting Requirements.

(a) The APP No. P103081- the monitoring and reporting under the APP was not inspected, but the burial of biosolids at the WWTF is a violation of the APP. **Rating: Non Compliance**

(b) Type 3 Reclaimed Water General Permit- Not Inspected

2 .**Operator Certification Requirements.** The WWTF is classified as a Class 3 WWTF and the collection system is classified as a Class 2 Collection System. The operator, Rod Spencer, holds a Grade 4 WWT license issued by ADEQ. **Rating: Compliance**

3. **Operation & Maintenance (O&M) Requirements.** The facility had violated the APP with the alleged burial of biosolids at the Section 11 WWTF. **Rating: Non Compliance**

END OF REPORT

ATTACHMENT 2

Perkins Coie Brown & Bain

Shane R. Swindle
PHONE: (602) 351-8384
FAX: (602) 648-7184
EMAIL: SSwindle@perkinscoie.com

2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
PHONE: 602.351.8000
FAX: 602.648.7000
www.perkinscoie.com

October 24, 2008

Hand Delivered

Daniel L. Czecholinski
Water Quality Compliance Assurance Unit, MC 5415B-1
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Re: Section 11 Wastewater Treatment Plant
Notice of Violation, Case ID#: 103357

Dear Mr. Czecholinski:

This firm represents Johnson Utilities, LLC (JU) with respect to the Notice of Violation (Case ID No. 103357) emailed to Brian Tompsett on October 20, 2008. The NOV alleges violations of various state and federal regulations pertaining to biosolids, and requests certain information within five days. Respectfully, five days is not sufficient time to gather and compile the information requested, or to prepare a response to the NOV. JU is nevertheless providing this partial response, on a rush basis, to address ADEQ's apparent misconceptions as to the biosolids temporarily stored at JU's Section 11 facility, and to confirm that there is no indication of any harm to the environment. JU reserves its right to supplement or amend this partial response as information is gathered. If, after reviewing this response, ADEQ believes that additional information is needed, we would appreciate meeting with you to discuss the timing and substance of your requests.

As a threshold matter, it appears that the NOV is based on the assumption by ADEQ that JU permanently disposed of biosolids at its Section 11 facility. That assumption is incorrect. As you know, 3F Contracting ("3F") submitted one or more applications to, and had numerous contacts with, ADEQ to become an applicator of

biosolids from some of JU's Water Reclamation Plants ("WRP"). In anticipation of approval of that application, earlier this year JU had Roadrunner Transit transport biosolids from its Pecan, San Tan and Anthem WRPs to Section 11 for temporary storage. It is also our understanding that 3F and subsequently Construction Utilities & Organics LLC were working with you and JU to identify and comply with applicable regulations for the anticipated land application. When 3F and Construction Utilities subsequently did not proceed with land application, JU ceased transporting biosolids from its Pecan, San Tan, and Anthem plants to Section 11 for temporary storage, and returned to disposing of its biosolids at landfills. All biosolids temporarily stored at Section 11 were from JU's Pecan, San Tan, or Anthem WRPs.

As you know, 40 CFR 503.9(y) contemplates temporary storage of biosolids for up to two years. Similarly, JU's AZPDES permit for the Pecan WRP allows for temporary storage (on or off site) for up to two years. As biosolids were not stored at Section 11 for more than a few months, the site is not considered a "disposal" site, and JU never intended to permanently dispose of biosolids at Section 11. We believe there therefore was no violation of A.A.C. R18-91003(A). Similarly, as the observed biosolids scattered on the ground were within the temporary storage area, within the plant's fenced perimeter, there was no violation of A.A.C. R18-9-1011(D). Because biosolids were not permanently disposed at Section 11, JU respectfully requests that ADEQ withdraw the NOV.

Although there was no apparent violation, I am enclosing for your records a CD containing copies (Bates numbered JU000001-JU000387) of the transportation manifests dated between September 26 and October 1, 2008 documenting the disposal of the biosolids temporarily stored at Section 11 to the Apache Junction Landfill. Substantial volumes of soil were also excavated from beneath the biosolids and disposed of simultaneously. Miscellaneous debris was also disposed. The enclosed manifests cover all of these materials. The biosolids were not sampled at the time of the excavation and transport to the Apache Junction Landfill. However, there probably are laboratory results for samples taken of biosolids generated at the Pecan, San Tan, and/or Anthem WRP plants. ADEQ may already have those laboratory results in prior submissions, or as part of 3F's applications. If not, at your request, JU will attempt to gather and compile such laboratory tests. Also, according to the NOV, ADEQ sampled the temporarily stored biosolids during its inspection. JU has not received any results from ADEQ's sampling. Laboratory results from the split samples taken by ADEQ and JU on September 25, 2008 are included on the enclosed CD (Bates numbered JU000388-JU000389). JU does not

believe there was any meaningful leakage further into the soil at Section 11. However, if ADEQ has concerns in that regard, JU will work with the Agency to develop and implement an appropriate sampling plan.

If you have any questions or comments, please contact me or Lee Stein.

Sincerely,

Shane R. Swindle

SRS:sm

Enclosure

ATTACHMENT 3

Perkins Coie Brown & Bain

Shane R. Swindle
PHONE: (602) 351-8384
FAX: (602) 648-7184
EMAIL: SSwindle@perkinscoie.com

2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
PHONE: 602.351.8000
FAX: 602.648.7000
www.perkinscoie.com

October 28, 2008

BY HAND DELIVERY

William J. Hare
Water Quality Field Service Compliance Unit, MC 5415B-1
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Re: Section 11 Wastewater Treatment Plant
Notice of Violation, Case ID#: 102722

Dear Mr. Hare:

This firm represents Johnson Utilities, LLC (JU) with respect to the Notice of Violation (Case ID No. 102722) emailed to Brian Tompsett on October 20, 2008. The NOV alleges violations of APP Permit No. P-103081 and A.R.S. § 49-241(A). The violations did not occur for the following reasons.

As explained in greater detail in my October 24, 2008 letter to Daniel L. Czecholinski (copy attached), the biosolids of concern were temporarily stored at Section 11 in accordance with 40 CFR 503 and A.A.C. R18-9-1007. Temporary storage is defined in 40 CFR 503.9(y) as a period of less than two years, and the biosolids in question were stored only for a few months earlier this year. The biosolids were generated at JU's Pecan, San Tan, or Anthem Water Reclamation Plants, and transported to Section 11. None of the biosolids were generated at Section 11. Since the biosolids were stored on site in accordance with A.A.C. R18-9-1007, there was no violation of A.R.S. §49-241(A) or APP Permit P-103081, Section 2.1, for the disposal of sludge.

Pursuant to A.A.C. R18-9-1002(B), the land application of biosolids in a manner consistent with 18 A.A.C., Chapter 9, Article 10 is exempt from the requirements of the aquifer protection program. Since the biosolids were stored on site in accordance with A.A.C. R18-9-1007, they are exempt from the requirements of the aquifer protection program.

For the reasons set forth above, JU requests that ADEQ withdraw its NOV. The alleged violations never occurred. Because no violations occurred, JU does not believe that any further action on its part is required. If ADEQ disagrees, JU requests a meeting to discuss the issues and the substance and timing of any further requests from ADEQ.

Although there were no violations, as reported in my October 24, 2008 letter to Daniel L. Czecholinski, JU has excavated the temporarily stored biosolids and disposed of them at the Apache Junction Landfill. JU does not believe there was any meaningful leakage further into the soil at Section 11. However, if ADEQ has concerns in that regard, JU will work with the Agency to develop and implement an appropriate sampling plan.

If you have any questions or comments, please contact me or Lee Stein.

Sincerely,

Shane R. Swindle

SRS:sm

Enclosure