BEFORE THE EXECUTIVE DIRECTOR
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

In the matter of: **ENERGYSOLUTIONS, LLC** **GROUNDWATER QUALITY DISCHARGE PERMIT No. UGW450005** **NOTICE OF VIOLATION AND COMPLIANCE ORDER** **Docket No. UGW14-04**	**ORDER ADOPTING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MEMORANDUM DECISION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT** March 25, 2016

On January 4, 2016, the administrative law judge issued *Proposed Findings of Fact, Conclusions of Law, and Memorandum Decision and Order on Cross Motions for Summary Judgement (Proposed Order)* in the above captioned adjudicative proceeding. The administrative law judge was directed to conduct an enforcement review adjudicative proceeding in this matter in accordance with Utah Code Ann., § 19-1-301 and Utah Admin. Code R305-7-301. When an administrative law judge submits a proposed dispositive action, I may adopt, adopt with modifications, or reject the proposed dispositive action; or return the proposed dispositive action to the administrative law judge for further action as required. Utah Code Ann., § 19-1-301. I am required to base a final dispositive action on the record of the proceeding before the administrative law judge. Id.

Having reviewed the record and independently considered the matter, including the parties' comments to the *Proposed Order,* I am satisfied that there are no genuine issues of material fact in dispute and summary judgment is warranted pursuant to Utah Admin. Code R305-7-312(6) and Utah R. of Civ. Pro. 56.

For the reasons explained more fully in the Proposed Order, even viewing the evidence in the light most favorable to Energy Solutions, the company failed to comply with the clear and unambiguous conditions and requirements in the Permit relating to the use of qualified data. The Permit, Part I.F.13(c), places the burden to properly collect and analyze water quality samples on Energy Solutions as the holder of the Permit. See Proposed Order FN. 85 citing administrative record Doc. No. 7 at IR000252 (providing that, "on an annual basis, the Permittee shall . . .[c]ollect water quality samples from fluids stored in the approved evaporation ponds . . . ."). Those samples must meet preservation and holding-time requirements set forth in Table B.4-2 of the currently approved Water Monitoring Quality Assurance Plan. Permit, Part I.F.13.c (IR000252).

The requirements set forth in Table B.4-2 establish a general rule. Had the samples for the P3-95 Pond met the criteria set forth in the table, there would have been no potential violation of the Permit. Energy Solutions' failure to meet the general rule is not in dispute. Rather, Energy Solutions seeks to fall under an exemption to the general rule. Energy Solutions has the burden of proof that it is entitled to invoke the benefits of the exemption. It has failed to satisfy that burden. See Proposed Order 20-23.

The Division of Radiation Control (DRC) was under no obligation to accept the qualified data in satisfaction of Permit requirements, especially where Energy Solutions did not timely disclose to DRC the issues with the subject samples. DRC's decision to not accept the qualified data falls within the DRC's discretion under the circumstances presented here. Allowing the permittee sole discretion to submit qualified data, as advocated by Energy Solutions, or failing to uphold a permit requirement to comply with a published analytical method, would undermine the appropriate goal of obtaining defensible, accurate regulatory data to compare with protection standards or other monitoring data in a meaningful way. Data quality is critical in determining compliance. "Erroneous laboratory results yield the same result as if no monitoring had been performed at all." DRC Comments to Proposed Order at FN 19 citing *Public Interest Research Group of New Jersey v. ELF Atochem North America, Inc.*, 817 F. Supp. 1164,1179 (D. New Jersey 1993).

Thus, the DRC has proven the existence of a violation of the Permit for the reasons stated in the notice of violation (NOV), and Energy Solutions has failed to prove an exemption. The remaining arguments and issues raised by Energy Solutions in these proceedings go to potential mitigation of the civil penalty, not to the question of whether a violation has been proven under strict liability. Summary judgment is warranted in favor of

the DRC as to the fact of a violation.

ORDER

WHEREFORE, I order the adoption of the *Proposed Order* in its entirety and incorporate it as if fully set forth herein, replacing the blank on line 4 of footnote 76 with the number 32 (thus, "cited in Finding of Fact No. 32 establish . . . .) and the word "holing" on line 6 of page 29 with the word "holding". For the reasons stated in the Proposed Order, I grant DRC's motion for summary judgment and I deny Energy Solutions' motion for summary judgment and, therefore, affirm the NOV and dismiss with prejudice Energy Solution's Request for Agency Action.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Judicial review of this final order may be sought in the Utah Court of Appeals in accordance with Sections 63G-4-401, 63G-4-403, and 63G-4-405 of the Utah Code Ann. and the Utah Rules of Appellate Procedure by filing a proper petition within thirty days after the date of this order.

ALAN MATHESON
Executive Director
Utah Department of Environmental Quality

DATED this 25 day of March, 2016.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2016, a true and correct copy of the foregoing ORDER ADOPTING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MEMORANDUM DECISION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT was served by e-mail upon the following:

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