



COLORADO
**Hazardous Materials
& Waste Management Division**
Department of Public Health & Environment

October 15, 2020

Mr. Jay Brown
Thornton, LLC
c/o Jaylon, Inc.
2530 Crawford Ave.
Suite 102
Evanston, IL 60201

Certified Mail No. # 7020 0640 0001 0175 6320

Sent via certified mail and email to jaylon7@gmail.com

**RE: October, 6, 2020 Thornton, LLC proposal - denied by CDPHE
EPA ID No. COR000212639/3.2**

Dear Mr. Brown,

On October 2, 2020, the Colorado Department of Public Health and Environment ("CDPHE") staff, you, your attorney Rebecca Almon, and your environmental consultant Tom Harp (Remediation Risk Reduction, "R³") participated in an online compliance conference. You requested this meeting to discuss CDPHE's August 21, 2020 compliance advisory, issued to you and Thornton, LLC (collectively, "Thornton, LLC"), which includes findings from an on and off-site inspection conducted by CDPHE on August 17, 2020.

During this inspection, CDPHE observed that no off-site injections of BOS-100® remediation treatment had occurred, as required by the as-approved *CAP Addendum* (see R³'s May 1, 2020 *Corrective Action Plan Addendum* proposal, as modified and approved by CDPHE's June 23, 2020 letter, *RE: 2020 Corrective Action Plan Addendum*). Based on its inspection, CDPHE determined Thornton, LLC is in violation of your corrective action schedule. Initial off-site injections in three areas were not completed by August 14, 2020.

In the October 2nd compliance conference, you asked whether CDPHE might consider a different corrective action proposal, such as a barrier wall. CDPHE responded that we are always willing to consider additional work proposals. In addition, you stated that Thornton, LLC will not meet the next corrective action schedule deadline, which requires you to complete off-site BOS-100® injections in six off-site areas by December 11, 2020 (see CDPHE's June 23, 2020 letter, *RE: 2020 Corrective Action Plan Addendum*). Instead, Thornton, LLC hoped CDPHE would approve a proposal to perform less work: limited BOS-100® injections covering reduced off-site areas. The rationale for this change is more limited remediation work might be affordable for Thornton, LLC, and it could start some work this month. On October 6, 2020, R³ submitted a proposed addendum to the as-approved 2020 CAP Addendum detailing Thornton, LLC's request for reduced BOS-100® injections.

Based on its review of this document, the purpose of the corrective action program, and site history, CDPHE denies this October 6th proposal for the following reasons:



1. Thornton, LLC's new proposal to inject in 1,500 square feet of off-site areas 1, 2 and 3 each (4,500 square feet total) would only be approximately 22 % of what is supposed to be injected in areas 1, 2 and 3 and only approximately 13% of what must be injected into off-sites area 1, 2, 3, 4, 5, and 6 by December 11, 2020 under the as-approved 2020 *CAP Addendum*. The proposal also does not discuss injections in off-site areas 4, 5, 6, and lacks a timeline. This plan is not a proposal for more work; instead, it is an attempt to secure permission to do less offsite. Because BOS-100® is a contact-based treatment (see Remediation Products, Inc. product description, available at <https://www.trapandtreat.com/products/bos-100/>), a reduction in injection area and volumes means less contamination would be treated. In addition, the BOS-100 off-site treatment would be effective for a shorter amount of time. Furthermore, the planned off-site injection areas are adjacent to local businesses, condominiums, and upgradient of a residential area. Reduced treatment areas square footage means the October 6, 2020 proposal is less protective of human health and the environment.
2. Thornton, LLC, through its consultants (LTE Environmental, Inc. and now R³) have long proposed using BOS-100 off-site. The approved plan is Thornton, LLC's treatment proposal to CDPHE. As stated in Thornton, LLC's November 2017 *Second Corrective Action Plan Modification*: "BOS-100® (a carbon based product) was injected during multiple events into the source area and in an area immediately downgradient of the source area. These interim *in situ* treatment efforts were conducted in 2008, 2009, and 2014 as prescribed in the initial CAP and the 1st CAP MOD." This 2017 document then describes planned off-site injections using BOS-100®. It is clear from this and other documentation that Thornton, LLC has had plenty of time to consider how to implement its remediation proposals, pursue off-site corrective action, and contemplate BOS-100® injection logistics.
3. State corrective action regulations do not include cost to the regulated entity as a basis for approving or disapproving corrective action plans, or making modifications. CDPHE's Corrective Action Unit also does not budget or run cleanups on behalf of regulated entities. Instead, regulated entities are empowered to work with their environmental consultants to discuss costs of proposals, and other available treatment options, before asking for regulatory review of corrective action plans. It appears that Thornton, LLC submitted a plan it now claims to not have the funds to implement. This is not a basis for modifying the approved CAP.

For these reasons, CDPHE rejects Thornton, LLC's October 6, 2020 proposal for reduced off-site treatments. The as-approved 2020 CAP Addendum and all corrective action work requirements remain in effect. Nothing in this letter shall be construed as modifying those requirements. As always, CDPHE reserves the right to require additional investigation and remediation activities.

Sincerely,

Lindsay Masters
Environmental Protection Specialist
Colorado Department of Public Health and Environment

ec: Tom Harp, Principal, R³
Rebecca Almon, Director, Ireland, Stapleton, Pryor and Pascoe, P.C.



Bernie Buescher, Of Counsel, Ireland, Stapleton, Pryor and Pascoe, P.C.
Doug Knappe, Hazardous Waste Program Manager, CDPHE
Robert Beierle, Corrective Action Unit Leader, CDPHE
Laura Dixon, Community Involvement Manager, CDPHE
Emily Splitek, Assistant Attorney General, AGO
HMWMD File

