

## **HighPoint Operating Corporation**

### **Land Application of Water-Based Bentonitic Drilling Fluids & Associated Drill Cuttings Krier #4 West Spreadfield (OGCC Facility Number: 462030)**

This document outlines the operational practices that will be employed when applying water-based bentonitic drilling fluids and associated drill cuttings via land application at the above referenced location. These practices will be employed to maintain compliance with the Colorado Oil and Gas Conservation Commission (COGCC) Rule 907.d.(3) and COGCC Policy on Drill Cuttings Management dated September 15, 2014. These materials are applied as a beneficial soil amendment.

Only water-based bentonitic drilling fluids and drill cuttings generated by HighPoint Operating Corporation (HPOC) will be applied at this site. No other E&P waste shall be deposited at this site. The plan detailed below follows the COGCC Land Application Plan Checklist, which is included as Attachment 1.

#### **Disposal Location Information**

1. Facility entrance is located at 40.473856, -104.204372. The center of the facility is located at 40.477398, -104.202048
2. Map illustrating section and surface water features is included as an attachment.
3. The land use is crop land - dry land agricultural, and non-crop land - rangeland.
4. Weld County Assessor's data lists the land use as agricultural. Mr. Krier has indicated that he intends to convert the rangeland portion of the acreage to dry land agricultural use. The clay rich properties of the mud and cuttings will benefit the sandy soils through the introduction of the bentonite based clays to help stabilize the soil and increase water retention in the soils. The site will be returned to dry land agriculture use following land application closure.
5. The proposed land application site is not in a sensitive area (determined utilizing COGCC GIS mapping data). Depth to groundwater is estimated to be greater than 74 feet (Water Well Permit # 259305 located north of spreadfield). The soil type is vona loamy sand and ascalon sandy loam (determined utilizing COGCC GIS mapping data). The soil will be incorporated onsite and mixed until soil concentrations are below table 910-1, thus the risk to migration to groundwater is minimal.

6. The land application facility is not in a mapped Sensitive Wildlife Habitat or Restricted Surface Occupancy as defined by mapped areas on COGCC GIS Online map.
7. Background arsenic and COGCC Table 910-1 metals (excluding Boron), pH, electrical conductivity (EC), and sodium adsorption ratio (SAR) soil concentrations were collected and additional background samples will be collected adjacent to the land application site as needed. Ongoing oil and gas activities are occurring at the Carlson #22-1, E2NW of Section 22-T6N-R61W; therefore, baseline hydrocarbon concentrations were collected (see attached).
8. The surface owner is Michael Krier and can be contacted at (970)396-5598. HPOC and the surface owner entered into an agreement signed 2/5/2019.
9. When requested by the COGCC, HPOC shall arrange access to the site via Michael Krier.
10. The site is located in unincorporated Weld County. Land application is consistent with local zoning land use policy.
11. The site is on private property and no sign preventing access from the public is necessary at this time.
12. The native soil will have the added benefit of increased clay content. When the site is converted back to dry land farming the soil will retain more moisture, which will enhance dry land farming practices.

### **Material Volume**

1. Approximately 30,000 yards of cuttings and 100,000 bbls of bentonitic drilling fluids will be applied to the land application facility in 2020.

### **Material Handling**

1. The cuttings will be stacked and dried as they come off the rig. Sawdust, EcoSponge, or another solidification/drying product will be utilized. The cuttings will be staged at the drill site in a bermed storage area prior to beneficial reuse.
2. The material will be stockpiled onsite in a bermed storage area. The material will be solidified onsite and then trucked to the land application facility. There is no indication that material will need to be separated and disposed of at a different facility.

3. The volume of material will be documented during drilling activities. The volume will be calculated based on drilling plans and saved by HPOC in the well files. Manifests will be created for trucking as an additional tracking measure.
4. Solidification will occur as the cuttings and drilling fluids come off the rig. The cuttings will be staged in a bermed area. The cuttings will be transported to the land application site and evenly distributed in a lift not to exceed 3-inches. The soil will be disked to ensure proper incorporation within 10 days of application. A water truck will be utilized if dust suppression is needed. The material shall remain stockpiled at the drilling location in an onsite berm until weather permits incorporation without interruption.
5. The facility will not receive fluids/cuttings for more than three years from the date of first use.

The following additional Krier #4 West BMPs are planned to prevent incidences from reoccurring:

1. Secondary and multiple ditch/berm combinations will be implented to eliminate channeling during heavy rainfall events.;
2. Retention ponds will be implemented for secondary containment of stormwater run off.;
3. Soil roughing will be applied to prevent pooling and provide additional surface area for mud to infiltrate the ground.;
4. The Krier #4 West will manned 24/7 to ensure truck offloading is applied to appropriate areas.
5. During surveillance, security, load siting, load tracking, inclement weather notifications will be monitored by a contractor or company man.;
6. HPOC's company man or contractor responsible ensure all mud loads must be spread and not dumped in one area. This will reduce the risk for pooling and channeling.;
7. Overall, improved management/supervision of each truck that comes on location.

## **Post Application Sampling and Closure Requirements**

1. During closeout, soil samples will be collected from a depth of 0-8 inches bgs. All soil samples will be analyzed for total petroleum hydrocarbons (TPH), including gasoline range organics (GRO) and diesel range organics (DRO). Soil samples will also be analyzed for benzene, toluene, ethylbenzene, xylenes (BTEX), electrical conductivity (EC), sodium adsorption ratio (SAR), pH, and arsenic. Soil samples will be collected until compliance with Table 910-1 standards is achieved. The attached Site Map illustrates proposed soil sample locations.
  
2. To receive closure HPOC shall:
  - Submit a Form 4 to the COGCC
  - Submit sample results and sample map.
  - Verify soils comply with Table 910-1.
  - Verify that all cuttings and fluids have been thoroughly incorporated.
  - Verify that sediment controls have been removed.
  - Verify that the surface owner is satisfied with the final condition of the property.
  - Verify that surface reclamation has been performed.

### Attachments:

- Figure 1 – Site Location Map
- Figure 2 – Site Map
- Figure 3 – Soil Location Map
- Attachment 1 – COGCC Land Application Plan Checklist
- Attachment 2 – Soil Samples Analytical Results
- Attachment 3 – Surface Owner Land Application Agreement

## **FIGURES**

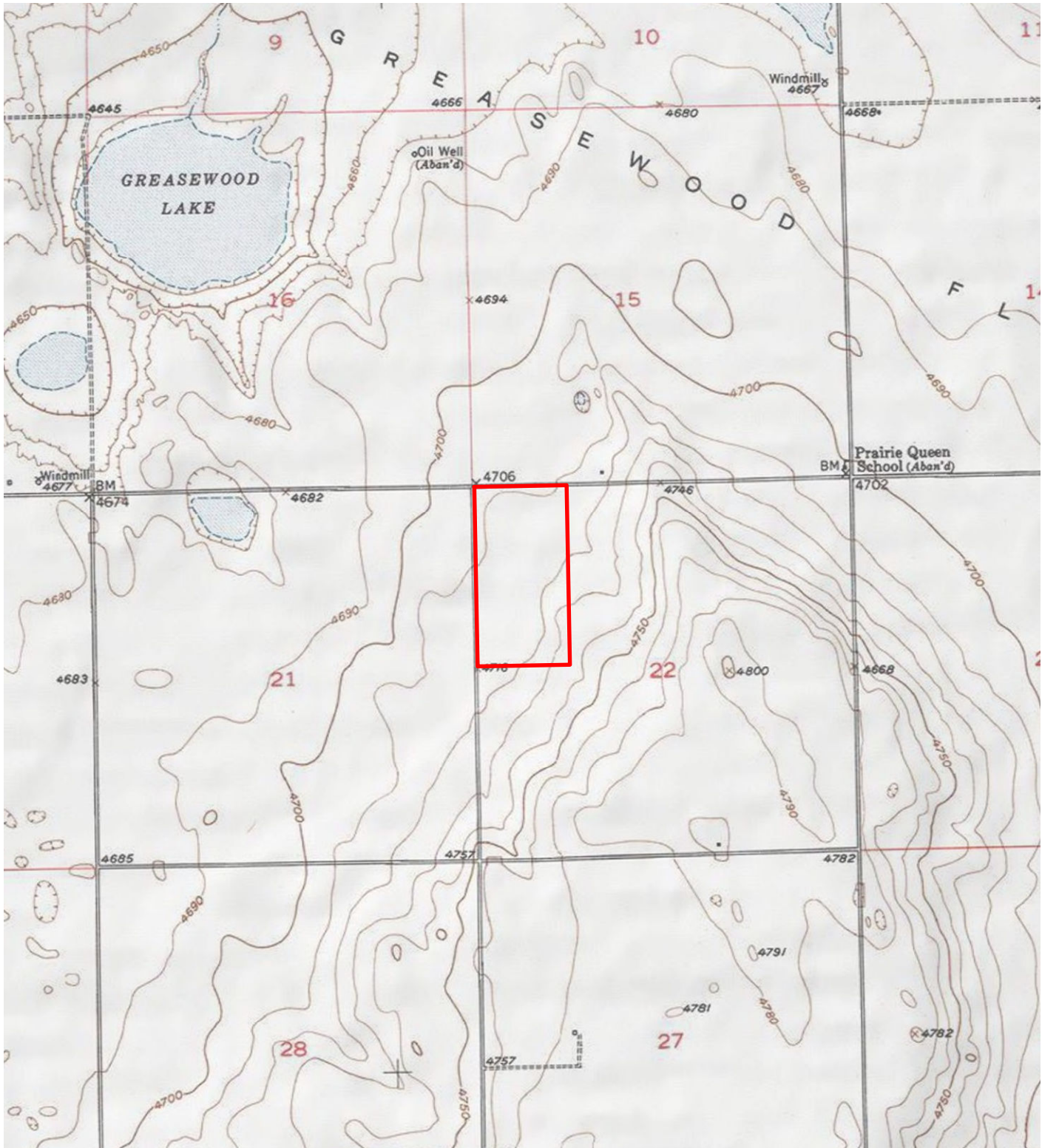
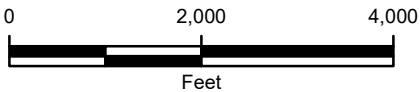


IMAGE COURTESY OF ESRI/USGS

**LEGEND**

 SPREADFIELD BOUNDARY



**FIGURE 1**  
**SITE LOCATION MAP**  
**KRIER #4 WEST SPREADFIELD SEC**  
**22-T6N-R61W**  
**WELD COUNTY, COLORADO**  
**HIGHPOINT RESOURCES**

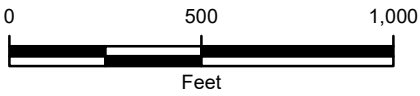




IMAGE COURTESY OF ESRI

**LEGEND**

- COMPOSITE SOIL SAMPLE
- SPREADFIELD BOUNDARY
- SECTION



**FIGURE 2**  
**SITE MAP**  
**KRIER #4 WEST SPREADFIELD**  
**SEC 22-T6N-R61W**  
**WELD COUNTY, COLORADO**  
**HIGHPOINT RESOURCES**





FIGURE 3  
SOIL LOCATION MAP  
KRIER #4 WEST SPREADFIELD  
SEC 22-T6N-R61W  
WELD COUNTY, COLORADO

**ATTACHMENT 1**

**COGCC Land Application Plan Checklist**

## COLORADO OIL & GAS CONSERVATION COMMISSION

### Land Application Plan - Checklist for Water-based Bentonitic Drilling Fluids and Associated Cuttings

#### Instructions

This document was developed to assist operators in preparing a plan for land application of allowable drilling fluids and/or associated drill cuttings generated from drilling with water based bentonitic drilling fluids only.

The intent of a Land Application Plan ("LAP") is to enable COGCC to better track the final disposition of drilling fluids and drill cuttings, to ensure the material is being fully incorporated into the land while minimizing run-off or other impacts to adjacent land or surface water, and to verify that resulting soils comply with Table 910-1 standards after incorporation. This Checklist provides operators with guidance on uniform information to be included in the LAP, and is intended to help ensure consistency during the COGCC approval process.

The LAP should be submitted via eForm 4, Sundry Notice. The following items should be included in the LAP, along with a copy of this checklist to aid in timely review and approval of the plans.

#### Recommended Information:

**Included**

Sundry eForm 4



Process to Receive Facility ID Number for eForm 4 Submittal:

- The operator shall contact staff area Environmental Protection Specialist by email and provide the following information:
  - Facility name;
  - GPS coordinates of the entrance to the facility or other relevant feature that will remain fixed over the life of the facility;
  - Topographic map or aerial photograph with boundaries of the land application area.
- Upon receipt of the lat/long, facility name and map, COGCC staff will create a Land Application Facility and reply to the operator with the Facility ID # to be used on the eForm 4 for submittal of the additional information.
- COGCC will process the eForm 4 and approve when appropriate. Operator shall not begin land application until approval of the eForm 4.

#### Disposal Location Information

**Included**

1) Latitude and Longitude of the physical entrance to the facility or other relevant feature that will remain fixed over the life of the facility.



2) Map showing the governmental Section, Township and Range as well as nearby hydrologic features (all surface water features and known water wells within 1/4 mile of the facility boundaries). The map shall be at an appropriate scale to illustrate the surface hydrology



- 3) Land use (Crop Land: dry land agricultural, irrigated, improved pasture, hay meadow, CRP; Non-Crop Land: rangeland, timber, recreational, industrial, commercial, residential)
- 4) If land use is Non-Crop Land, provide a justification for the application of drilling fluids and/or cuttings as a beneficial amendment for Non-Crop Land, along with a detailed surface reclamation plan for the land application site.
- 5) Is the proposed land application site in a Sensitive Area? On what data has the determination been made? Include actual depth to groundwater, if available, or estimated depth based on available information; soil type and proximity to surface waters and wetlands should also be considered.
- 6) Verification that the land application facility is not in a mapped Sensitive Wildlife Habitat or Restricted Surface Occupancy Area as defined by mapped areas available on COGCC GIS Online map.
- 7) Background sampling and analysis plan to establish pre-application conditions and a listing of parameters being analyzed. Samples should include, at a minimum, background parameters listed in COGCC table 910-1.
- 8) Surface Owner contact information and a date of signature for the agreement between the surface owner and the operator approving this activity.
- 9) Operator shall provide means of access to land application site when requested by COGCC for purposes of inspection.
- 10) Verification that land application of drilling fluids/cuttings is consistent with local (City, County) zoning land use policy (refer to existing permit number or determination that permits were not required).
- 11) Description of site control measures, including proposed signage, to prevent unauthorized dumping or access by the public if appropriate.
- 12) Description of the benefit to native soil that application of the water based bentonitic fluids and/or drill cuttings will achieve.

**Material Volume**

**Included**

- 1) Estimate of the maximum volume of drilling fluids/cuttings to be applied at the facility in a given year based on anticipated loading rates.

**Material Handling**

**Included**

- 1) Description of any plan for treating drilling fluids/cuttings prior to land application (bioremediation, solidification, etc.)
- 2) Description of any stockpiling or segregation of drilling fluids/cuttings prior to leaving the well site (e.g. note whether material that cannot be treated onsite or transported

directly to a land application site will be disposed at a landfill and/or transported to a centralized waste management facility).

3) Method of material tracking (manifests/haul tickets). Tracking information will be retained by the operator and provided to the COGCC upon request as per Rule 907.b.

4) Description of material handling and best management practices that will be implemented at the land application facility to address the following as applicable:

- stockpiling, mixing
- method of incorporation (thickness, machinery for spreading and incorporating)
- timeframe for incorporation within 10 days of application
- runoff/sediment controls
- tracking control
- dust control
- odor control
- contingency for frozen or muddy conditions that would prevent timely incorporation

5) Confirm that the facility will receive drilling fluids/cuttings for less than 3 years consecutively from the date of waste management plan approval, or from the date of first land application as reported to COGCC via Sundry Notice eForm 4.

**Post Application Sampling and Closure Requirements**

**Included**

1) Provide a post-application sampling and analysis plan that includes proposed sampling locations to support a closure request.

2) To receive closure:

- The operator shall notify the COGCC via Form 4 requesting closure of the land application facility.
- Submit post-application sample results along with a sample location map
- Verify that site soils comply with Table 910-1.
- Verify that all drilling fluids and associated drill cuttings have been thoroughly incorporated.
- Verify that any temporary runoff/sediment controls have been removed.
- Verify that surface owner is satisfied with final condition of property.
- Verify that surface reclamation has been performed, if appropriate. (Verification can include photo-documentation, email correspondence, dates of work performed, etc.)

**ATTACHMENT 2**

**Soil Samples Analytical Results**

**TABLE 1  
SOIL ANALYTICAL RESULTS**

**KRIER #5 SPREADFIELD  
WELD COUNTY, COLORADO  
HIGHPOINT RESOURCES CORPORATION**

PARAMETER	COGCC Table 910-1 Concentration Levels	UNITS	SS01	SS02	SS03	SS04	SS05	SS06	SS07	SS08
			3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019
Benzene	0.17	mg/kg	<0.0020	<0.0020	<0.0020	<0.0020	<0.0020	<0.0020	<0.0020	<0.0020
Toluene	85	mg/kg	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050
Ethylbenzene	100	mg/kg	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050
Total Xylenes	175	mg/kg	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010
TPH-GRO	--	mg/kg	<0.50	<0.50	<0.50	<0.50	<0.50	<0.50	<0.50	<0.50
TPH-DRO	--	mg/kg	<50	<50	<50	<50	<50	<50	<50	<50
TPH-ORO	--	mg/kg	<50	<50	<50	<50	<50	<50	<50	<50
TPH	500	mg/kg	<100.50	<100.50	<100.50	<100.50	<100.50	<100.50	<100.50	<100.50
Arsenic	0.39	mg/kg	<b>4.32</b>	<b>6.25</b>	<b>6.60</b>	<b>5.60</b>	<b>5.34</b>	<b>6.24</b>	<b>5.74</b>	<b>6.56</b>
Barium	15,000	mg/kg	82.3	97.7	95.7	67.9	86.6	96.8	84.1	88.7
Cadmium	70	mg/kg	<0.224	<0.225	<0.263	<0.223	0.257	<0.219	<0.225	<0.220
Chromium (III)	120,000	mg/kg	7.0	8.2	8.0	7.1	9.2	6.9	9.0	8.6
Chromium (VI)	23	mg/kg	<0.30	<0.30	<0.30	<0.30	<0.30	<0.30	<0.30	<0.30
Copper	3,100	mg/kg	9.23	10.8	11.7	8.62	11.5	8.63	11.4	12.8
Lead	400	mg/kg	9.11	10.7	11.8	8.16	11.6	11.3	11.0	11.2
Mercury	23	mg/kg	<0.0561	<0.0563	<0.0658	<0.0557	<0.0572	<0.0547	<0.0561	<0.0549
Nickel	1,600	mg/kg	8.32	10.5	10.9	8.39	11.0	8.61	11.0	10.8
Selenium	390	mg/kg	<0.449	<0.450	<0.527	<0.446	<0.458	<0.438	<0.449	<0.439
Silver	390	mg/kg	0.0548	0.0656	0.0715	0.0485	0.0668	0.0491	0.0644	0.102
Zinc	23,000	mg/kg	42.1	49.8	55.5	40.5	59.4	40.6	56.4	52.2



**TABLE 1  
SOIL ANALYTICAL RESULTS**

**KRIER #5 SPREADFIELD  
WELD COUNTY, COLORADO  
HIGHPOINT RESOURCES CORPORATION**

PARAMETER	COGCC Table 910-1 Concentration Levels	UNITS	SS01	SS02	SS03	SS04	SS05	SS06	SS07	SS08
			3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019	3/11/2019
EC	4.0	mmhos/cm	1.65	0.981	0.465	0.455	0.578	0.896	0.900	0.606
pH	6 - 9	SU	8.35	8.37	8.54	8.56	8.22	8.34	8.15	8.44
SAR	12	unitless	0.273	0.479	0.361	0.319	0.266	1.31	0.547	0.722
Calcium	--	mg/kg	1,050	715	883	609	475	1,150	392	759
Magnesium	--	mg/kg	595	286	476	274	471	492	265	343
Sodium	--	mg/kg	44.6	59.9	53.6	37.7	34.2	211	57.2	95.4

**Notes:**

COGCC - Colorado Oil and Gas Conservation Commission

DRO - diesel range organics analyzed by EPA Method 8015

EPA - United States Environmental Protection Agency

GRO - gasoline range organics analyzed by EPA Method 8260B

mg/kg - milligrams per kilogram

mmhos/cm - millimhos per centimeter in saturated paste extract

ORO - oil range organics analyzed by EPA method 8015

EC - electrical conductivity analyzed by EPA Method 120.1

SAR - sodium adsorption ratio determined by calculation

TPH - total petroleum hydrocarbons, sum of GRO, DRO, and ORO

-- - not applicable/not analyzed

< - indicates result is less than the stated laboratory method reporting limit

**BOLD** - indicates result exceeds the applicable COGCC Table 910-1 concentration level

Benzene, toluene, ethylbenzene, and total xylenes analyzed by EPA Method 8260B



**ATTACHMENT 3**

**Surface Owner Land Application Agreement**

## LAND APPLICATION AGREEMENT

This Land Application Agreement (this "Agreement") is made and entered into as of this 5<sup>th</sup> day of February 2019, (the "Effective Date"), by and between HighPoint Operating Corporation, a Delaware corporation having an address at 1099 18<sup>th</sup> Street, Suite 2300, Denver Colorado 80202 ("Producer") and Michael Krier, having an address at 31125 CR 91 Orchard, CO 80649 ("Krier"). Producer and Krier may be referred to singularly as a "Party" and collectively as the "Parties."

- A. Krier owns, maintains, and operates a landfarm facility for the disposal of drilling mud and cuttings (the "Landfarm"), located in the W ½ of NW ¼ of Section 22, Township 6 North, Range 61 West of the 6<sup>th</sup> P.M. Weld County, CO.
- B. Producer is engaged in the business of exploring for and producing oil, gas, and other hydrocarbons for itself and for the account of others.
- C. Producer desires to dispose of oilfield waste consisting of water-based bentonitic drilling mud and cuttings (the "Waste Material") at the Landfarm, and Krier is willing to take such Waste Material on the terms and conditions set forth herein.

Now, therefore, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. RETENTION OF KRIER

Subject to the terms and conditions of this Agreement, Krier shall use reasonable efforts to accept all Waste Material Producer delivers to the Landfarm (the "Work"). Nothing in this Agreement shall obligate Producer to deliver any certain quantities of Waste Material to the Landfarm during the term of this Agreement.

### 2. TERM

This term of this Agreement shall be three (3) years, commencing upon the Effective Date above, unless terminated sooner as provided herein.

### 3. DISPOSAL RATES

Producer agrees to pay Krier for Work satisfactorily rendered hereunder at the rates and pursuant to the terms set forth on Exhibit A ("Disposal Rates").

#### **4. KRIER'S REPRESENTATIONS AND WARRANTIES**

Krier represents and warrants that:

(a) All Work shall be conducted in compliance with Colorado Oil and Gas Conservation Commission ("COGCC") Rule 907.d(3)B and the COGCC Policy on Drill Cuttings Management, dated September 15, 2014 (attached hereto), which rule and policy include limits on the depth of drilling mud and cuttings applied, the timely incorporation of such materials into the native soil, and the control of drainage or runoff.

(b) All Work shall be performed in compliance with all applicable laws, rules, and regulations (including all safety codes, statutes, regulations, precautions, and procedures), utilizing all necessary protective equipment and devices, whether required by safety associations, Governmental Authorities (as defined herein) or otherwise; and

(c) Krier, his subcontractors, and their employees are sufficiently experienced and suitably trained to perform the Work.

#### **5. STANDARD OF PERFORMANCE**

Krier shall perform the Work with skill, care, and diligence, in a good and workmanlike manner, in accordance with the terms hereof and good industry standards of performance and in a timely manner.

#### **6. COMPLIANCE WITH LAWS**

Krier shall comply with all laws, rules, regulations, ordinances, judgments, orders and other official acts of all federal, state, municipal, foreign, and other agencies or regulatory bodies ("Governmental Authorities") that are now or may in the future become applicable to Krier and his business, equipment, and personnel engaged in the performance of the Work or this Agreement, or arising out of or incidental to such performance.

#### **7. OPERATIONS**

(a) Krier's Responsibilities. During the term of this Agreement and except as otherwise expressly provided in this Agreement, Krier shall operate and maintain the Landfarm at Krier's sole cost, expense, and risk. Krier shall be responsible for the maintenance and operation of the Landfarm all related equipment.

(b) Producer's Responsibilities.

(i) Producer shall not deliver to Krier's Waste Material that contains any RCRA hazardous waste or other substances reasonably objectionable to Krier.

(ii) Producer shall obtain and maintain all COGCC permits and licenses required in connection with the Landfarm.

(iii) Producer will supply Krier with a high-level drill schedule to forecast the expected number of wells to be drilled and anticipated volumes over a mutually agreeable time period.

(c) Transporters. Producer may use company-owned or third-party transportation companies to haul Waste Material to the Landfarm.

## **8. CONFIDENTIALITY**

Except as otherwise provided herein, Krier and Producer agree that any and all information, including without limitation, geological and geophysical information Krier obtains while performing Work, including but not limited to information concerning depth, formations penetrated, the results of coring, testing and surveying, communicated by one Party ("Disclosing Party") to the other ("Receiving Party"), shall be "Confidential Information" and treated as and held in strict confidence by Receiving Party, shall be used only for purposes of this Agreement by Receiving Party, and that no information, including without limitation the provisions of this Agreement, shall be disclosed by the Receiving Party, its agents or employees, without the prior written consent of the Disclosing Party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the Receiving Party. The Receiving Party shall safeguard Confidential Information with at least the same degree of care that it uses to safeguard its own confidential, proprietary, and trade secret information. This Section shall not apply to information: (i) in the public domain; (ii) the Receiving Party had in its possession prior to receiving it from the Disclosing Party (as evidenced by dated documentation); (iii) the Receiving Party obtained from a third party who rightfully acquired such information; or (iv) the Receiving Party independently developed without reference to the information received from the Disclosing Party (as evidenced by dated documentation). If the Receiving Party must disclose any Confidential Information pursuant to applicable law or regulation or by operation of law, the Receiving Party may disclose only such information as, in the opinion of counsel, is legally required, and provided that the Receiving Party shall provide reasonable notice to the Disclosing Party of such requirement and a reasonable opportunity to object to such disclosure. Notwithstanding any other provision of this Agreement, the terms of this Section shall apply to Confidential Information amounting to a trade secret for so long as such information remains a trade secret under applicable law. The terms of this provision shall survive the termination of this Agreement. Further, Producer, as the Receiving Party, may distribute to its joint venturers, co-working interest owners, and other co-venturers any Confidential Information received from Krier that Producer is required to provide or disseminate to them pursuant to any applicable agreement.

## **9. MAINTENANCE OF RECORDS**

Krier shall retain all books and records relating to the Work for a thirty-six (36) month period commencing at the end of the calendar year in which the applicable Work was completed, and for any additional period not to exceed one calendar year as may be necessary to permit Producer to complete any audit commenced within such period. Representatives and auditors of Producer shall have access at any time during normal working hours to the books and records Krier maintains relating to this Agreement and any of the Work performed hereunder, and shall have the right to copy and audit such books and records.

**10. INDEMNITY OBLIGATIONS**

(b) Definitions. The following terms shall be defined as follows:

“Producer Group” shall mean, individually or in any combination, Producer, its parent, affiliates, and subsidiary entities, its and their joint venturers, joint interest owners, partners, co-owners, co-lessees, contractors, and subcontractors of any tier (other than Krier and its subcontractors of any tier) and the respective directors, officers, agents, representatives, employees, and invitees of all of the foregoing.

“Krier” shall mean, individually or in any combination, Krier, Krier’s subcontractors of any tier, and each of their respective agents, representatives, employees, and invitees.

“Defend” shall mean the obligation of the indemnitor at the indemnitees’ election: (i) to defend the indemnitees at the indemnitor’s sole expense or (ii) to reimburse the indemnitees upon the indemnitees’ request for the indemnitees’ reasonable expenses incurred in defending themselves. Notwithstanding the indemnitees’ election of option (i) above, the indemnitees shall be entitled to participate in their defense at their sole cost.

“Losses” shall mean claims, demands, causes of action, legal proceedings, losses, liabilities, indemnity obligations to Third Parties, costs, damages, penalties, or expenses of any kind and character (including attorney’s fees and other legal expenses and punitive, exemplary, and the multiplied portion of multiplied damages).

“Third Party or Third Parties” shall mean all persons and entities that are not part of Producer Group or Krier.

“Transfer of Title to Waste Material” shall occur when Waste Material arrives at the Landfarm.

(c) Indemnification.

(i) PRODUCER HEREBY AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY KRIER GROUP FROM ALL LOSSES ARISING OUT OF OR RELATING TO PRODUCER GROUP’S OWNERSHIP, HANDLING, TRANSPORTATION, OR DELIVERY OF THE WASTE MATERIAL PRIOR TO THE TRANSFER OF TITLE TO WASTE MATERIAL TO KRIER. FOR THE AVOIDANCE OF DOUBT, “LOSSES” IN THIS SECTION 10(b)(i) SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY CLAIMS RELATING TO BODILY INJURY, DEATH, OR ILLNESS, OR DAMAGE TO FACILITIES, EQUIPMENT, OR OTHER PROPERTY, AND ANY LOSSES RELATING TO ANY SPILL, LEAK, CONTAMINATION, OR OTHER ENVIRONMENTAL LIABILITY OCCURRING PRIOR TO THE TRANSFER OF TITLE TO WASTE MATERIAL TO KRIER.

(ii) KRIER HEREBY AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY PRODUCER GROUP FROM ALL LOSSES

ARISING OUT OF OR RELATING TO KRIER GROUP'S OWNERSHIP, HANDLING, TRANSPORTATION, MANAGEMENT, PROCESSING, OR DISPOSAL OF WASTE MATERIAL AT AND AFTER TRANSFER OF TITLE TO WASTE MATERIAL TO KRIER. FOR THE AVOIDANCE OF DOUBT, "LOSSES" IN THIS SECTION 10(b)(ii) SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY CLAIMS RELATING TO BODILY INJURY, DEATH, OR ILLNESS, OR DAMAGE TO FACILITIES, EQUIPMENT, OR OTHER PROPERTY, AND ANY LOSSES RELATING TO ANY SPILL, LEAK, CONTAMINATION, OR OTHER ENVIRONMENTAL LIABILITY OCCURRING AT AND AFTER TRANSFER OF TITLE TO WASTE MATERIAL TO KRIER. UNDER NO CIRCUMSTANCES SHALL PRODUCER BE LIABLE FOR ANY LOSSES ARISING OUT OF OR IN ANY WAY RELATING TO WASTE MATERIALS GENERATED BY OR DELIVERED TO KRIER BY ANY THIRD PARTIES.

(iii) Each Party agrees that upon its discovery of facts giving rise to a claim for indemnity under this Agreement, including, without limitation, receipt or notice of any demand, action, or proceeding, judicial or otherwise, asserted by any Third Party with respect to any matter it believes may give rise to a claim for indemnification under this Agreement, it shall give prompt written notice to the other Party, together with the details of, and all documents relating to, such claim. The Party seeking indemnification shall afford the other Party a reasonable opportunity to pay, settle, or contest the claim at the indemnifying Party's expense, pursuant to the terms of this Section, and the Party seeking indemnification may not settle or compromise any indemnification-related claim or consent to the entry of any indemnification-related judgment without the prior written consent of the indemnifying Party.

(d) Each Party waives and releases all claims against the other party for indirect or consequential damages directly or indirectly arising out of this Agreement or the Work, regardless of whether caused or contributed to by the sole, joint, or concurrent negligence, strict liability, preexisting condition, or any other fault of the Indemnified Party.

(e) Notwithstanding anything in this Agreement to the contrary, Krier shall to the fullest extent permitted by applicable law, release, discharge, defend, indemnify, and hold Producer Group harmless from all Losses arising from: (i) Krier's failure to obtain and maintain all permits and licenses required of it to perform the Work; and/or (ii) Krier's failure to otherwise comply with all laws, rules, regulations, ordinances, judgments, orders, and other official acts of any Governmental Authority applicable to the construction, maintenance, or operation of the Landfarm.

## **11. INSURANCE**

Krier shall procure and maintain for the duration of this Agreement insurance with commercially reasonable policy limits determined by Krier in consultation with his insurance broker, and Producer Group shall be named as an additional insured to the extent of the risks and liabilities assumed by Krier in this Agreement. It is stipulated and agreed that Krier is an independent contractor, and not

an employee, of Producer. As such, Krier shall have no right to be covered by Producer's workers' compensation insurance, and Producer shall have no obligation to pay any employment-related taxes on behalf of, or in connection with, Krier.

## **12. INDEPENDENT CONTRACTOR**

Krier is an independent contractor with respect to the performance of all Work, and neither Krier nor anyone employed by Krier shall be deemed for any purpose to be the employee, agent, servant, borrowed servant, or representative of Producer in the performance of any Work. Producer shall have no direction or control of Krier or its employees, agents, representatives, or subcontractors, except in the results to be obtained. Krier shall perform and supervise all Work, but Producer or its representatives shall have full and complete access to the Work site to determine whether Krier is performing the Work in accordance with the provisions of this Agreement. This Agreement shall not be construed as creating a partnership, joint venture, or other association whereby Producer and Krier would be jointly liable or liable as partners or co-venturers.

## **13. ASSIGNMENT/SUBCONTRACTS**

(a) Krier shall not subcontract or assign this Agreement or any Work to be furnished hereunder without the prior written consent of Producer, and the assignment of this Agreement or the subcontracting of any Work to be performed hereunder, if so permitted by Producer, shall not relieve Krier of its duties or obligations hereunder. If Krier attempts to subcontract or assign this Agreement or any Work without such consent, such attempted assignment and subcontracting shall be void and Producer may terminate this Agreement notwithstanding Section 2.

(b) Producer shall have the right to assign this Agreement or any Work to be furnished hereunder to any parent, affiliate, or subsidiary entity, or its or any of their joint venturers, joint interest owners, partners, co-owners, or co-lessees.

## **14. MODIFICATION OF AGREEMENT**

No change, modification, extension, renewal, ratification, rescission, discharge, abandonment, or waiver of this Agreement or any of the provisions hereof, or any representation, promise, or condition relating to this Agreement shall be binding upon Parties unless made in writing, signed by the Parties, and specifically referencing this Agreement.

## **15. TERMINATION**

After this Agreement is terminated in accordance with the terms of this Agreement, neither Party shall, by the termination of this Agreement, be relieved of either its respective obligations arising from or incidental to Work performed hereunder prior to the time this Agreement is terminated or its respective obligations under Sections 8, 9, 10, 11, 12, and 16(d). Termination of this Agreement shall not affect any Work then in progress unless Producer, in its sole discretion, so elects.

16. **MISCELLANEOUS**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to principles thereof relating to conflicts of law rules that would direct the application of the laws of another jurisdiction.

(b) EACH PARTY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THIS AGREEMENT.

(c) This Agreement and exhibits hereto supersede any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement.

(d) Krier's representations, warranties, and indemnities in this Agreement shall survive Krier's completion of any Work performed and the termination of this Agreement.

(e) If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.


(f) This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties hereto and delivered to the other Party. In the event that this Agreement is delivered by facsimile transmission or by e-mail delivery of a ".pdf", such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(g) This Agreement shall be binding upon the Parties hereto and their respective successors and permitted assigns.


*[Signature page follows.]*

IN WITNESS WHEREOF, this Agreement is executed as the date first above written, but shall be effective for all purposes as of the Effective Date.

HIGHPOINT OPERATING CORPORATION

By:   
Troy Schindler  
Senior Vice President - Operations

Landowner - KRIER

  
Michael Krier