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EPA--REGION 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	DOCKET NO. SDWA 10-2015-0078
)	
EIELSON AIR FORCE BASE)	CONSENT AGREEMENT AND
Eielson Air Force Base, Alaska)	FINAL ORDER
)	
Respondent)	
_____)	

The United States Environmental Protection Agency ("EPA") issues the following Consent Agreement & Final Order to resolve alleged violations of the Safe Drinking Water Act with the United States Air Force, Eielson Air Force Base ("Respondent").

I. AUTHORITIES

1.1. This Consent Agreement & Final Order ("CAFO") is issued under the authority vested in the Administrator of the EPA under Section 1423(c) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300 h-2(c).

1.2. The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region 10, who in turn has delegated the authority to the Director of the Office of Compliance and Enforcement, Region 10.

1.3. In accordance with Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to issuance of, the Final Order contained in Part V of this CAFO. Respondent waives its right, under SDWA § 1423(c)(3), 42 U.S.C. § 300h-2(c)(3), to a hearing on the issuance of this order.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Part III of this CAFO contains a statement of the legal and factual allegations against Respondent.

2.3. This Order shall become effective in accordance with Paragraph 5.5.

III. ALLEGATIONS

3.1. Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), authorizes EPA to administer the Underground Injection Control (“UIC”) program in states which do not have approved state programs. The State of Alaska does not have primacy to administer the UIC program for Class V injection wells. Therefore, EPA Region 10 directly implements the Class V UIC program in the State of Alaska.

3.2. Section 1423(a)(2) of the Act, 42 U.S.C. § 300h-2(a)(2), grants EPA enforcement authority whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. EPA’s enforcement authority includes issuing an administrative order to require compliance with UIC regulations, to assess penalties, or both under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

3.3. Section 1447(a) of the Act, 42 U.S.C. § 300j-6(a), expressly waives any sovereign immunity otherwise applicable to the United States with respect to any substantive or procedural requirement, including injunctive relief, administrative order, or civil or administrative penalty.

3.4. 40 C.F.R. § 144.3 defines “person” as an “individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.”

3.5. 40 C.F.R. § 144.3 defines “owner or operator” as “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program.”

3.6. 40 C.F.R. § 144.3 defines “well” as a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

3.7. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in semisolid, liquid, sludge, gas, or any other form or state.

3.8. 40 C.F.R. § 144.3 defines “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

3.9. 40 C.F.R. § 144.6 defines the types of wells regulated under the UIC program. 40 C.F.R. Part 144, Subpart G defines the requirements for Class V wells. A motor vehicle waste disposal well is a Class V well.

3.10. 40 C.F.R. § 144.81(16) defines a “motor vehicle waste disposal well” (“MVWDW”) as a well that receives or has received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (“MCLs”) established by federally mandated primary drinking water regulations. These fluids also may

include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

3.11. 40 C.F.R. §§ 144.87(b)(1) and 144.88(b)(1)(v) set out requirements for closing MVWDWs. Pursuant to 40 C.F.R. § 144.87(b)(1), States are required to identify all ground water protection areas by January 1, 2004. Pursuant to 40 C.F.R. §§ 144.87(b)(1) and 144.88(b)(1)(v), if a State fails to identify ground water protection areas by January 1, 2004, all MVWDWs in the State operational or under construction as of April 5, 2000, must be closed by January 1, 2005, in accordance with 40 C.F.R. § 144.89.

3.12. The State of Alaska failed to identify ground water protection areas in the State by January 1, 2004, and therefore all MVWDWs in Alaska operational or under construction as of April 5, 2000, must be closed by January 1, 2005. The State of Alaska did subsequently establish ground water protection areas after the January 1, 2004 deadline.

3.13. Respondent is part of the Department of the Air Force, a Federal agency, and therefore meets the definition of a “person” under 40 C.F.R. § 144.3.

3.14. Respondent is the owner and operator of two wells located at Building 1232 at Eielson.

3.15. **Building 1232:** The primary purpose of Building 1232 (“Site”) is aircraft maintenance and building drains were historically routed to an oil-water separator and then piped to two UIC wells with open-bottom construction. These two wells received motor vehicle waste fluids, and contaminants were present in sediment collected within the wells.

3.16. On December 14, 2009, EPA received Respondent’s UIC well inventory which identified two active wells at Building 1232 as part of a stormwater drainage system.

3.17. On July 2, 2012, EPA received from Respondent the “Underground Injection Control Well (UIC) Identification and Removal Work Plan Eielson Air Force Base” (dated June 2012) (“Work Plan”), which included a plan to close the two wells at Building 1232.

3.18. On August 6, 2012, EPA conditionally approved the Work Plan.

3.19. On September 26, 2012, Respondent notified EPA that the two wells were open-bottom construction and contamination was present in sediment collected within the wells.

3.20. In May 2013, an UIC Sediment Removal Plan was submitted to EPA and corresponding field work was conducted in October 2013 which included the removal of 2,200 gallons of contaminated sediment from the two wells.

3.21. EPA issued a Request for Information on January 30, 2014 regarding injection wells at Buildings 1134, 1300, 3405 and 1232 and requested an updated inventory of injection wells. EPA received Respondent’s response on April 2, 2014 and determined that the two wells at Building 1232 were MVWDWs.

3.22. On May 6, 2014, EPA sent Respondent a Notice of Violation of Part C of the SDWA for unauthorized operation of two MVWDWs at Building 1232.

3.23. Respondent has violated and continues to violate 40 C.F.R. § 144.87(b)(1)(i) and 40 C.F.R. § 144.88(b)(1)(v) because it failed to close the MVWDWs described in Paragraph 3.15 by January 1, 2005 in accordance with the closure requirements in 40 C.F.R. § 144.89.

3.24. In accordance with Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1) and 40 C.F.R. Part 19, Respondent is liable for administrative penalties of up to \$16,000 per day of violation.

IV. CONSENT AGREEMENT

Penalty

4.1. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), EPA determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of \$26,200. This penalty amount has been determined in consideration of the statutory penalty factors identified in Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B).

4.2. Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in Paragraph 4.1, above, within 30 days of the effective date of the Final Order.

4.3. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.4. Respondent must serve photocopies of the check or documentation of the wire

transfer or electronic payment described in Paragraph 4.3, above, on the Regional Hearing Clerk and EPA Region 10 at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, MS ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
smith.candace@epa.gov

David Domingo
U.S. Environmental Protection Agency
Ground Water Unit
1200 Sixth Avenue, Suite 900, OCE-082
Seattle, WA 98101
domingo.david@epa.gov

4.5. Respondent shall seek all existing funds to meet the requirements of this CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with the SDWA, the applicable regulations thereunder, or this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

Compliance Order

4.6. **Prohibition of Injection:** Respondent shall not inject any fluid into any of the subject wells except in compliance with this Order, a permit issued pursuant to UIC regulations, or an authorization by rule.

4.7. **Implementation of Well Closure Requirements:** Respondent shall implement the Well Closure requirements described in Paragraph 4.16.

4.8. **Notifications:**

a. Respondent shall provide EPA's Project Coordinator, identified in Paragraph 4.13, email notification no less than five days prior to commencement of any closure activity under this Order.

b. Respondent shall provide a copy of this Order to any contractor and/or consultant retained to perform any work described in this Order at least 48 hours prior to the initiation of such work. Respondent shall simultaneously email EPA's Project Coordinator, that the notice required in this subparagraph was given. No contract between Respondent and a contractor and/or a consultant shall affect Respondent's obligation to comply fully with this Order.

c. In the event of any transfer of a subject well prior to the termination of this Order, Respondent shall provide a copy of this Order to any successor in ownership, control, operation, or any other interest in all or part of the subject wells, at least 30 days prior to the transfer. Respondent shall simultaneously email EPA's Project Coordinator, that the notice required in this subparagraph was given. A transfer of property rights at the Site will not affect Respondent's obligation to comply fully with this Order.

4.9. Site Access: This Order does not affect EPA's authority to enter, inspect, sample, or monitor compliance under any law, permit, court order, or agreement. Respondent shall provide EPA or its authorized representatives access to the Site upon reasonable notice. EPA or its authorized representatives will be permitted to move freely at the Site and appropriate off-site areas to determine compliance with this Order and to conduct actions in accordance with this Order.

4.10. Site Data: At EPA's request, Respondent shall provide access to all records and documentation related to the conditions at the Site and to results or data pertaining to the compliance activities conducted under this Order.

4.11. **Record Preservation:** Respondent shall preserve and retain, and shall instruct its consultant and other persons acting on its behalf, to preserve and retain all records and documents relating in any manner to the Requirements of Paragraph 4.16 for three years after termination of this Order. Upon termination of the three-year period, EPA may request Respondent to provide EPA with copies of any records and documents related to this Order or implementation of the requirements of Paragraph 4.16. If EPA requests records and documents, Respondent shall, at no cost to EPA, but subject to a claim of privilege, provide EPA the original or copies of the records and documents within 30 days of EPA's request. If EPA makes no request at the end of the three-year period, Respondent may dispose of the records and documents.

4.12. **Modification:** EPA may, after consultation with Respondent, make a preliminary determination that tasks in addition to those defined in the requirements of Paragraph 4.16, including any approved modifications, are necessary to accomplish the Well Closure Requirements. EPA shall notify Respondent of preliminary determinations in writing, and Respondent shall have 14 days from receipt to submit a written response. Modifications of this Order, including oral modifications, shall be memorialized in writing and shall take effect only when agreed to in writing by all parties.

4.13. **Project Coordinator:**

- a. EPA Project Coordinator who will oversee implementation of this Order is:

David Domingo
U.S. Environmental Protection Agency
Ground Water Unit
1200 Sixth Avenue, Suite 900, OCE-082
Seattle, WA 98101
Phone: 206-553-2456

Fax: 206-553-1762
Email: domingo.david@epa.gov

EPA Project Coordinator shall receive communications, which include, but are not limited to, all documents, reports, comments, approvals and other correspondence submitted or exchanged under this Order. All submissions required by this Order shall be sent to the EPA Project Coordinator.

- b. Within 10 days of the effective date of this Order, Respondent must identify a project coordinator for purpose of receipt of all communication and implementation of this Order. The contact information for this project coordinator must be sent to the EPA Project Coordinator identified above in Paragraph 4.13.a.

4.14. ***Failure to comply:*** Failure to timely and appropriately implement to EPA's satisfaction any element of the requirements of Paragraph 4.16 shall be deemed a violation of this Order and the SDWA.

4.15. ***Scope of Order:***

- a. This Order is not and shall not be construed to be a permit under the SDWA, nor shall it in any way relieve or affect Respondent's obligation under the SDWA, or any other applicable federal, state or local laws, regulations or permits.
- b. This Order shall in no way affect the rights of EPA or the United States against any person not a party to this Order.
- c. Nothing in this Order shall be deemed to constitute a precedent by any party for any future administrative order, consent decree or civil action relating to

the Site and/or any restoration work undertaken at the Site.

4.16. ***Well Closure Requirements:*** Respondent must submit a Class V Well Pre-Closure Notification Form (Attachment 1: EPA Form 7520-17) for the MVWDWs at Building 1232 a minimum of 30 days before the planned closure activity. The MVWDWs at Building 1232 must be permanently closed in accordance with 40 C.F.R. §§ 144.82, 144.89(a) and 146.10(c) no later than December 31, 2015. Respondent must comply with the following standards and requirements:

a. ***Standard Operating Procedures for Well Closure:***

1. For the 2 MVWDWs at Building 1232, Respondent must submit a Closure Plan to EPA within 45 days of the effective date of the Final Order.
2. EPA will review the Closure Plan and notify Respondent regarding the results of review, including any additional requirements or recommendations.
3. Respondent closes the 2 MVWDWs at Building 1232.
4. Respondent submits to the EPA Project Coordinator a Final Well Closure Report by September 14, 2015, which must include a narrative statement describing the closure procedures, photographs of all closure activities, confirmatory sample results and waste manifests from the closures of the wells.
5. EPA reviews the Final Well Closure Report.

b. ***Performance Standards for Well Closure:*** Closures of all Class V injection wells must be conducted in a manner that protects underground sources of

drinking water and complies with all applicable laws and regulations related to removal of materials from the well and adjacent to the well: 40 C.F.R. §§ 144.12(a), 144.82, 144.89, and 146.10(c).

- c. **Sampling Requirements:** Respondent must collect an end-point sample from the cleaned out motor vehicle waste disposal well, beneath the point of discharge. The sampling location should be selected based on the construction of the injection well and likelihood of detecting any contaminants that were injected beneath the ground surface. Respondent will propose an appropriate location for sampling for each injection well to be closed. The end-point sample shall be analyzed for the following constituents consistent with the prior use of this well for disposal of motor vehicle waste fluids:

1. Volatile organic compounds by the most current version of EPA Method 8260;
2. Semivolatile organic compounds by EPA Method 8270; and
3. Arsenic, cadmium, chromium, and lead by an EPA approved metals analysis method.

4.17. **Termination and Satisfaction:** In accordance with Paragraph 4.16, Respondent must submit to EPA the Final Well Closure Reports documenting the completion of all requirements described in Paragraph 4.16. Upon receipt of the final reports, EPA may schedule an inspection of any or all of the subject wells with Respondent and other interested state and/or federal agencies. After review of final reports and potential inspection, EPA will

notify Respondent in writing whether the Respondent has completed all requirements specified within this Order. Subject to the requirements described in Paragraph 4.11, this Order shall terminate after Respondent pays the administrative penalty in accordance with this CAFO and EPA issues written approval of Respondent's final reports.

General Provisions

4.18. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.19. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.21. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V, below.

4.22. Respondent received 30 day notice of this compliance order pursuant to section 300h-2(c)(3)(A) of the SDWA, 42 U.S.C. § 1423(c)(3)(A). Respondent agrees not to contest EPA's jurisdiction or authority to enter into or enforce this compliance order. Respondent waives the opportunity to request a hearing on or to appeal this compliance order under sections 42 U.S.C. §§ 1423(c)(3)(A) & (c)(6). Respondent agrees not to contest the validity of any terms and conditions of this compliance in any action to enforce, or any action arising from, this compliance order.

4.23. Full payment of the penalty amount in paragraph 4.1 and compliance with this Order shall not in any case affect the right of the EPA or the United States to pursue criminal sanctions for any violations of law. Full payment of the penalty amount in paragraph 4.1 shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

4.24. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.25. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant EPA Region 10.

DATED:

18 MAR 15

FOR RESPONDENT:

M. Winkler

MICHAEL P. WINKLER, Colonel, USAF
Commander, 354th Fighter Wing

DATED:

3/26/2015

FOR COMPLAINANT:

E. J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. **FINAL ORDER**

5.1. The Administrator delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who redelegate this authority to the Regional Judicial Officer.

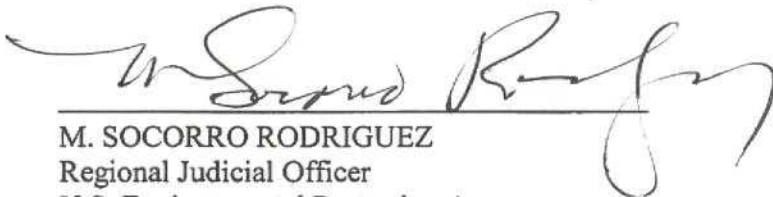
5.2. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.3. This CAFO shall constitute a settlement by EPA of all claims for administrative penalties pursuant to the SDWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the SDWA and regulations or permits promulgated thereunder.

5.4. Pursuant to Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. § 22.45(b), EPA provided public notice and an opportunity to comment on this Consent Agreement and Final Order.

5.5. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 12th day of May, 2015.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Eielson Air Force Base, Docket No.: SDWA-10-2015-0078**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

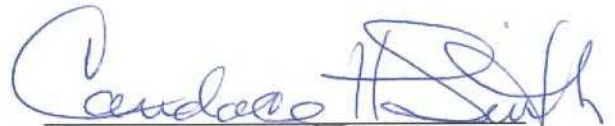
The undersigned certifies that a true and correct copy of the document was delivered to:

Kathleen Doster
U.S. Environmental Protection Agency
Federal Facilities Enforcement Office
1200 Pennsylvania Ave., N.W., MC2261A
Washington, D.C. 20460

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Michael P. Winkler, Colonel, USAF
Commander, 354h Fighter Wing
354 Broadway Street
Eielson Air Force Base, AK 99702

DATED this 13th day of May, 2015


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10