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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	<b>DOCKET NO. SDWA 10-2011-0134</b>
U.S. Army Garrison Fort Wainwright	)	
	)	<b>CONSENT AGREEMENT &amp;</b>
Respondent,	)	<b>FINAL ORDER</b>
	)	
Fort Wainwright, Alaska	)	

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 U.S. Army Garrison Fort Wainwright ("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 1447(b) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300j-6(b).

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. Pursuant to SDWA 1447(b), 42 U.S.C. § 300j-6(b), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,"

1 40 C.F.R. Part 22, EPA hereby issues, and the Respondent hereby agrees to issuance of, the  
2 Final Order contained in Part V of this CAFO. Respondent waives its right, under SDWA §  
3 1447(b)(3), 42 U.S.C. § 300j-6(b)(3), to a hearing on the issuance of this order.

4 **II. PRELIMINARY STATEMENT**

5 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.43, issuance of this CAFO  
6 commences this proceeding, which will conclude when the Final Order contained in Part V of  
7 this CAFO becomes effective.

8 2.2. Part III of this CAFO contains a statement of the legal and factual allegations  
9 against the Respondent.

10 2.3. This Order shall become effective in accordance with Paragraph 5.4.

11 **III. ALLEGATIONS**

12 3.1. Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), authorizes EPA to administer  
13 the Underground Injection Control (“UIC”) program in states which do not have approved state  
14 programs. The State of Alaska has not acquired primacy of the Class V UIC program.  
15 Therefore, EPA Region 10 directly implements the Class V UIC program in the State of  
16 Alaska.  
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18 3.2. Section 1423(a)(2) of the Act, 42 U.S.C. § 300h-2(a)(2), grants EPA  
19 enforcement authority whenever the Administrator finds that any person subject to any  
20 requirement of any applicable UIC program is violating that requirement. EPA’s enforcement  
21 authority includes commencing a civil action under Section 300h-2(b) of the Act,  
22 42 U.S.C. § 1423(b), or issuing an administrative order to require compliance with UIC  
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1 regulations, to assess penalties, or both under Section 1423(c) of the Act,  
2 42 U.S.C. § 300h-2(c).

3 3.3. 40 C.F.R. § 144.3 defines “person” as an “individual, association, partnership,  
4 corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.”

5 3.4. Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), grants EPA enforcement  
6 authority whenever the Administrator finds that a Federal agency subject to any requirement of  
7 any applicable UIC program is violating that requirement. EPA’s enforcement authority  
8 includes issuing an administrative penalty order under Section 1447(b) of the Act,  
9 42 U.S.C. § 300j-6(b).

10 3.5. Section 1447(a) of the Act, 42 U.S.C. § 300j-6(a), expressly waives any  
11 sovereign immunity otherwise applicable to the United States with respect to any substantive  
12 or procedural requirement, including any injunctive relief, administrative order, or civil or  
13 administrative penalty.

14 3.6. Section 1445 of the Act, 42 U.S.C. § 300j-4, authorizes EPA to conduct  
15 inspections and to request information to determine whether the owner or operator of an  
16 injection well has acted or is acting in compliance with the UIC program.

17 3.7. 40 C.F.R. § 144.17 authorizes EPA to require an owner or operator of an  
18 injection well to establish and maintain records, make reports, conduct monitoring, and provide  
19 other information as is deemed necessary to determine whether the owner or operator has acted  
20 or is acting in compliance with Part C of the SDWA or its implementing regulations.

21 3.8. 40 C.F.R. § 144.3 defines “owner or operator” as “the owner or operator of any  
22 “facility or activity” subject to regulation under the UIC program.”  
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1           3.9.   40 C.F.R. § 144.11 prohibits any underground injection, except as authorized by  
2 rule or permit under the UIC program.

3           3.10. 40 C.F.R. § 144.12 prohibits any injection activity that allows the movement of  
4 fluids containing any contaminant into an Underground Source of Drinking Water (“USDW”)  
5 if the presence of that contaminant may cause a violation of any primary drinking water  
6 regulation or may otherwise adversely affect the health of persons.

7           3.11. 40 C.F.R. § 144.3 defines “USDW” as an aquifer or its portion, which supplies  
8 any public water system; or which contains a sufficient quantity of ground water to supply a  
9 public water system; and currently supplies drinking water for human consumption or contains  
10 fewer than 10,000 mg/l total dissolved solids; and which is not an exempted aquifer.  
11

12           3.12. 40 C.F.R. § 144.86(c) defines “ground water protection area” as a geographic  
13 area near and/or surrounding community and non-transient non-community water systems that  
14 use ground water as a source of drinking water. These areas receive priority for the protection  
15 of drinking water supplies.

16           3.13. 40 C.F.R. § 144.3 defines “injection well” as a “well” into which “fluids” are  
17 being placed.

18           3.14. 40 C.F.R. § 144.3 defines “well” as a bored, drilled, or driven shaft whose depth  
19 is greater than the largest surface dimension; or, a dug hole whose depth is greater than the  
20 largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.  
21

22           3.15. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or  
23 moves whether in semisolid, liquid, sludge, gas, or any other form or state.  
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1           3.16. 40 C.F.R. § 144.3 defines “contaminant” as any physical, chemical, biological,  
2 or radiological substance or matter in water.

3           3.17. 40 C.F.R. § 144.6 defines the types of wells regulated under the UIC program.  
4 40 C.F.R. Part 144, Subpart G defines the requirements for Class V wells. A motor vehicle  
5 waste disposal well is a Class V well.

6           3.18. 40 C.F.R. § 144.81(16) defines a “motor vehicle waste disposal well”  
7 (“MVWDW”) as a well that receives or has received fluids from vehicular repair or  
8 maintenance activities, such as an auto body repair shop, automotive repair shop, new and used  
9 car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility  
10 that does any vehicular repair work. Fluids disposed in these wells may contain organic and  
11 inorganic chemicals in concentrations that exceed the maximum contaminant levels (“MCLs”)  
12 established by federally mandated primary drinking water regulations. These fluids also may  
13 include waste petroleum products and may contain contaminants, such as heavy metals and  
14 volatile organic compounds, which pose risks to human health.

15           3.19. 40 C.F.R. § 144.87 mandates that all motor vehicle waste disposal wells in  
16 Alaska must be closed, in accordance with 40 C.F.R. § 144.89, by January 1, 2005.

17           3.20. Respondent is part of the Department of Army, a Federal agency, and therefore  
18 meets the definition of a “person” under 40 C.F.R. § 144.3.

19           3.21. **Ski Area Maintenance Facility, Building 1185:** The injection well at the Ski  
20 Area Maintenance Facility consists of a septic system (septic tank and leach field) that  
21 currently serves a bathroom and previously served floor drains in the snowmaking machine  
22 area, as well as the snow cat and vehicle equipment storage/maintenance area. The septic  
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1 system is an injection well that has received motor vehicle waste fluids. This injection well is  
2 located in a ground water protection area for a public drinking water supply and endangers the  
3 USDW if fluids entering the septic tank and leach field contain contaminants that may be  
4 carried into the aquifer. This injection well was a Class V MVWDW.

5           **3.22. Landfill CAT Shed, Building 1191:** The injection well at the Landfill CAT  
6 Shed consists of a septic tank and leach pit that previously served a bathroom and a floor drain  
7 in the vehicle storage area of the shed. A plan drawing dated August 1972, indicates that the  
8 building was previously used for vehicle storage and repair. The septic system is an injection  
9 well that has received motor vehicle waste fluids. This injection well is located in a ground  
10 water protection area for a public drinking water supply and endangers the USDW if fluids  
11 entering the septic tank and leach pit contain contaminants that may be carried into the aquifer.  
12 This injection well was a Class V MVWDW.

13           **3.23. Golf Course Maintenance Facility, Building 2095/2096:** The injection well at  
14 the Golf Course Maintenance Facility buildings consists of a septic system (septic tank and  
15 leach field) that currently serves the bathrooms in Building 2096 and previously served a  
16 grounds equipment washdown system in Building 2095, as well as two floor drains in the golf  
17 cart storage and maintenance area of Building 2096. The septic system is an injection well that  
18 has received motor vehicle waste fluids. This injection well is located in a ground water  
19 protection area for a public drinking water supply and endangers the USDW if fluids entering  
20 the septic tank and leach field contain contaminants that may be carried into the aquifer. This  
21 injection well was a Class V MVWDW.  
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1 3.24. Respondent is the owner and operator of the MVWDWs in the Ski Area  
2 Maintenance Facility, the Golf Course Maintenance Facility, and the Landfill CAT Shed.

3 3.25. EPA notified Respondent in 2005, 2007, 2008, 2009, and 2010 that the  
4 MVWDWs described in Paragraphs 3.21 through 3.23 of this Order (collectively “the subject  
5 wells” located at the “Sites”) must be closed.

6 3.26. After EPA conducted an inspection in July 2005 and notified Respondent that  
7 the subject wells must be closed, Respondent submitted closure plans in November 2005  
8 committing to close the two wells in the Ski Area Maintenance Facility and the Golf Course  
9 Maintenance Facility. In December 2005, EPA approved both closure plans, which were to  
10 include permanent elimination of the connection between the floor drains in the vehicle  
11 maintenance areas and the injection wells, and conducting environmental assessments to  
12 determine whether additional removal of contaminated materials would be required.

13 3.27. In July 2007, EPA conducted a compliance evaluation inspection of the subject  
14 wells and it discovered that none of the wells were closed in accordance with UIC regulations.  
15 In response to these findings, in August 2007, Respondent committed to assess the status and  
16 conduct an environmental assessment of the well at the Landfill CAT Shed at the same time as  
17 the assessments of the wells at the Ski Area Maintenance Facility and the Golf Course  
18 Maintenance Facility.

19 3.28. In July 2008, EPA conducted another compliance evaluation inspection and  
20 found that Respondent had not closed or assessed any of the subject wells.

21 3.29. In August 2009, EPA sent to Respondent a Request for Information asking for  
22 all information about the closure of and assessments for the subject wells. The Request for  
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1 Information also reminded Respondent of its commitment to close the subject wells. In  
2 October 2009, Respondent responded that the subject wells remained open, and that  
3 environmental assessments would be conducted in early 2010.

4 3.30. On January 12, 2010, EPA sent to Respondent a Notice of Non-Compliance for  
5 failure to close the subject wells. Along with the Notice of Non-Compliance, EPA sent  
6 Respondent another Request for Information. The January 12, 2010, Request for Information  
7 sought the analytic results from the environmental assessments for the subject wells that  
8 Respondent stated would be completed in early 2010. The Request for Information required  
9 that Respondent provide the results of the environmental assessments no later than March 31,  
10 2010. In its responses dated February 19, 2010 and March 23, 2010, Respondent committed to  
11 begin environmental assessments on May 5, 2010, and to submit a final report no later than  
12 August 8, 2010.

14 3.31. On August 4 and 6, 2010, Respondent informed EPA that no environmental  
15 assessments were completed on the subject wells and that the final report would not be  
16 completed on August 8, 2010. Respondent provided the following justification for the delay:  
17 internal miscommunication and misunderstanding of the priority of the work, which was  
18 further complicated by a personnel change. On August 16, 2010, Respondent informed EPA  
19 that samples would be collected on August 18 and 19, 2010, and a final report submitted to  
20 EPA in October 2010.

22 3.32. On August 31, 2010, EPA sent to Respondent a Notice of Violation for failure  
23 to close the subject wells and for failure to respond fully to the January 12, 2010 Request for  
24 Information.

1           3.33. On September 29, 2010, Respondent provided EPA a draft of the “UIC Leach  
2 Field Assessment Report” for the subject wells. On November 12, 2010, Respondent provided  
3 EPA a “Draft UIC Leachfield After Action Report” of the groundwater sampling for the  
4 subject wells. The reports showed that the groundwater sample from the Landfill CAT Shed  
5 contained a concentration of benzene of 5.58 µ/L, above the Safe Drinking Water Act  
6 Maximum Contaminant Level of 5 µ/L (40 C.F.R. § 141.61). The draft report also provided  
7 updated closure activity information for the subject wells.  
8

9           3.34. On October 8, 2010, Respondent sent a “UIC Notice of Violation Response  
10 letter” and associated documents. It confirmed that the closures of the subject wells were in  
11 progress, but were not complete in accordance with federal regulations.

12           3.35. In accordance with 40 C.F.R. § 144.87, Respondent failed to close the subject  
13 wells by January 1, 2005.

14           3.36. In accordance with 40 C.F.R. § 144.17 and § 144.27, Respondent failed to  
15 comply with the January 12, 2010, Request for Information asking for the results of the  
16 environmental assessments for the subject wells.

17           3.37. On March 10, 2011, Respondent provided the final report of the sampling  
18 results from the environmental assessments for the subject wells, which completed the  
19 Respondent’s response to the January 12, 2010, Request for Information.

20           3.38. On April 5, 2011, Respondent provided Class V Well Pre-Closure Notification  
21 Forms and reclassification proposals for the subject wells. For the Ski Area Maintenance  
22 Facility well, Respondent states that the septic system’s capacity is twenty-four people per day,  
23 and that no fluids other than sanitary waste will enter the septic system. Because the system  
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1 has the capacity to serve more than twenty people per day, it is a Class V injection well that  
2 will be reclassified as a large capacity septic system. 40 C.F.R. § 144.1(g)(2). For the Golf  
3 Course Maintenance Facility well, Respondent provided the UIC program with photo  
4 documentation that the floor drain associated with the Landa treatment system was  
5 permanently plugged on August 8, 2011, which confirmed that the effluent from the system  
6 will no longer enter the injection well. The injection well will, however, be used for disposal  
7 of sanitary waste. The well has the capacity to serve more than twenty people per day.  
8 Consequently, the injection well will be reclassified as a Class V large capacity septic system.  
9 For the Landfill CAT Shed well, Respondent stated on July 1, 2011 that the injection well is no  
10 longer receiving fluids because the floor drain in the vehicle repair area was permanently  
11 closed and the restroom was removed. In addition, on August 15, 2011, Respondent provided  
12 the UIC program with documentation that bentonite was pumped into the septic tank and leach  
13 pit on July 29, 2011 to permanently close the injection well. Respondent has also agreed to  
14 add this injection well to the Operable Unit during the Five Year Review for 2011 under the  
15 CERCLA action ongoing at Fort Wainwright. On August 15, 2011, Respondent provided the  
16 UIC program the language that will be published in the Five Year Review identifying the well  
17 at the Landfill CAT Shed for further investigation under CERCLA as a potential source of  
18 contamination to be remediated.  
19

20  
21 3.39. In accordance with Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), and 40  
22 C.F.R. Part 19, Respondent is liable for administrative penalties of up to \$32,500 per day of  
23 violation.

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1 **IV. CONSENT AGREEMENT**

2 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional  
3 allegations contained in Part III of this CAFO.

4 4.2. Respondent neither admits nor denies the specific factual allegations contained  
5 in Part III of this CAFO.

6 4.3. Pursuant to Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b), EPA determined  
7 and Respondent agrees that an appropriate penalty to settle this action is in the amount of  
8 SEVENTY-NINE THOUSAND ONE HUNDRED SEVENTY DOLLARS (\$79,170).  
9

10 4.4. Respondent consents to issuance of the Final Order set forth in Part V, below,  
11 and agrees to pay the total civil penalty set forth in Paragraph 4.3, above, within thirty (30)  
12 days of the effective date of the Final Order.

13 4.5. Payment under this CAFO must be made by cashier's check or certified check  
14 payable to the order of "Treasurer, United States of America" and delivered to the following  
15 address:

16 U.S. Environmental Protection Agency  
17 Fines and Penalties  
18 Cincinnati Finance Center  
19 PO Box 979077  
20 St. Louis, MO 63197-9000

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

22 4.6. Respondent must serve photocopies of the check described in Paragraph 4.5,  
23 above, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

24 Regional Hearing Clerk  
25 U.S. Environmental Protection Agency  
Region 10, MS ORC-158  
1200 Sixth Avenue, Suite 900

1 Seattle, WA 98101

2 Anne Christopher  
3 U.S. Environmental Protection Agency  
4 Ground Water Unit  
5 1200 Sixth Avenue, Suite 900, OCE-082  
6 Seattle, WA 98101

7 4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due  
8 date set forth in Paragraph 4.4, then the entire unpaid balance of the assessed penalty and any  
9 unpaid, accrued interest shall become immediately due and owing. Should such a failure to  
10 pay occur, Respondent may be subject to an administrative action to collect payment under the  
11 federal Debt Collection Act of 1982, as amended. In any collection action, the validity,  
12 amount, and appropriateness of the penalty shall not be subject to review.

13 4.8. The undersigned representative of Respondent certifies that he or she is fully  
14 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this  
15 document.

16 4.9. Respondent expressly waives any right to contest the allegations and waives any  
17 right to appeal the Final Order set forth in Part V, below.

18 4.10. The provisions of this CAFO shall bind Respondent and its agents, servants,  
19 employees, successors, and assigns.

20 ///

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1 4.11. The above provisions are STIPULATED AND AGREED upon by Respondent  
2 and Complainant EPA Region 10.  
3

4 DATED:

5  
6 30 Aug 2011

FOR RESPONDENT:

7 Ronald M. Johnson  
8 Signature

9 Print Name: Ronald M. Johnson

10 Title: COL, SIF Commanding

11 DATED:

12 Sept 08, 2011

FOR COMPLAINANT:

13 Edward J. Kowalski

14 EDWARD J. KOWALSKI, Director  
15 Office of Compliance and Enforcement

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**V. FINAL ORDER**

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

5.2. 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.

5.3. Pursuant to Section 1447(b)(4) of the Act, 42 U.S.C. § 300j-6(b)(4), and 40 C.F.R. § 22.43(c), EPA provided public notice of Consent Agreement and Final Order served on the parties, and provided public notice that any interested person may, within thirty (30) days of the effective date of the final Order, obtain judicial review of the penalty order pursuant to Section 1447(b)(4) of the Act, 42 U.S.C. § 300j-6(b)(4).

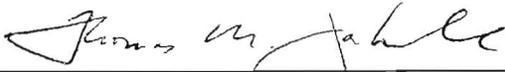
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1           5.4. In accordance with 40 C.F.R. § 22.43(b), this Final Order shall become effective  
2 thirty (30) days after it is served on the parties.

3  
4 SO ORDERED this 13<sup>th</sup> day of September, 2011.

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8 \_\_\_\_\_  
9 THOMAS M. JAHNKE  
10 Regional Judicial Officer  
11 U.S. Environmental Protection Agency  
12 Region 10  
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1  
2 **CERTIFICATE OF SERVICE**

3 I certify that the original of the attached "Consent Agreement and Final Order" in the **In**  
4 **the Matter of: U.S. Army Garrison Fort Wainwright, Docket No. SDWA 10-2011-**  
5 **0134** was filed with the Regional Hearings Clerk on: Sept. 14, 2011

6 On Sept. 14, 2011, the undersigned certifies that a true and correct  
7 copy of the document was hand delivered to:

8 Ankur Tohan, Attorney  
9 U.S. Environmental Protection Agency, Region 10  
10 1200 Sixth Ave (ORC-158)  
11 Seattle, WA 98101

12 Further, the undersigned certifies that a true and correct copy of the above referenced  
13 document was placed in the United States mail certified/return receipt requested on  
14 Sept. 14, 2011 to:

15 Colonel Ronald M. Johnson, USA  
16 Garrison Commander  
17 Attn: IMPC-FWA-ZA1060  
18 Gaffney Road #6000  
19 Fort Wainwright, Alaska 99703-6000

20 Tracy Carter  
21 Civil Law/Environmental Law Attorney  
22 Fort Wainwright Law Center, OSJA, US Army Alaska  
23 1060 Gaffney Road #6000  
24 Fort Wainwright, Alaska 99703-6000

25 Dated: Sept. 14, 2011 Carol Kennedy  
Carol Kennedy  
Regional Hearings Clerk  
EPA Region 10

